

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2019-02

Application of Chinook Solar, LLC

**DECISION AND ORDER GRANTING APPLICATION
FOR CERTIFICATE OF SITE AND FACILITY**

December 17, 2020

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I. INTRODUCTION

On October 18, 2019, Chinook Solar LLC (Chinook or Applicant) filed an application for a Certificate of Site and Facility (Application) with the Site Evaluation Committee (Committee). The Applicant seeks the issuance of a Certificate of Site and Facility (Certificate) approving the siting, construction, and operation of a new 30 MW solar energy generation facility (Project). The facility will be located entirely in Fitzwilliam, Cheshire County.

II. PROCEDURAL HISTORY

The Application was filed on October 18, 2019. On October 22, 2019, the Administrator forwarded correspondence to the host community, Fitzwilliam, and to all abutting municipalities. The Administrator sent a similar notice to the Southwest Regional Planning Commission on December 3, 2019.

On October 24, 2019, the Attorney General appointed Assistant Attorney General Heather Neville to serve as Counsel for the Public.

On October 28, 2019, the Administrator sent notice to state agencies with permitting, licensing or other regulatory authority over matters covered in the Application. The Administrator requested that each state agency review the relevant portions of the Application and advise the Committee whether the Application contained sufficient information to consider the issuance of any permit, conditions, or licenses within the jurisdiction of the agency.

On December 17, 2019, the Subcommittee issued an Order accepting the Application and finding that the Application contained sufficient information to carry out the purposes of RSA 162-H.

A public information hearing pursuant to RSA 162-H:10, I-a was held in Fitzwilliam on January 15, 2020. A site visit and inspection were performed on February 20, 2020 followed by

a public hearing of the Subcommittee in Fitzwilliam.

The Town of Fitzwilliam (Fitzwilliam) was granted intervenor status on February 5, 2020.

The adjudicative hearing was held on September 15, 18 and 22, 2020. Due to the coronavirus pandemic and pursuant to Emergency Order 12 issued by Governor Christopher Sununu the adjudicative hearing was held by remote video platform. The hearing was open to the public via video. The record closed on September 22, 2020.

The Subcommittee deliberated via video platform on October 16 and 19, 2020. The public had access via the remote video platform. After deliberations, the Subcommittee voted to approve the Application and issue a Certificate with conditions.

III. SUMMARY OF THE APPLICATION

A. Acceptance

On December 17, 2019, the Subcommittee found the Application contained sufficient information to carry out the purposes of RSA 162-H and accepted the Application as complete. This section summarizes the contents of the Application.

B. Location and General Nature of the Site

The Application proposes the construction of a 30-megawatt (MW) solar energy generation facility and associated electrical infrastructure in Fitzwilliam in Cheshire County. The Applicant is Chinook Solar LLC. Chinook is a special purpose entity that is an indirect subsidiary of NextEra Energy Inc. (NextEra.) NextEra owns Chinook through four wholly owned subsidiary companies, NextEra Capital Holdings Inc (NECH), NextEra Energy Resources, LLC (NEER), ESI Energy Inc. (ESI) and NextEra Energy Renewable Holdings, LLC (NERH.) App. p. 41. Chinook and the NextEra companies are headquartered in Juno Beach

Florida. App. p. 11.

The Project will be located in Fitzwilliam on approximately 513 acres south of NH State Route 119, east of NH State Route 12, and west of Fullam Hill Road. Directly east of the Project and west of Fullam Hill Road is a transmission corridor comprised of a 345-kilovolt (kV) electric transmission line owned by Eversource Energy (Eversource), along with a separate corridor containing two 115-kV electric transmission lines, both owned by National Grid PLC (National Grid). The Project will connect to the electric grid via one of the 115-kV electric transmission lines.

Upon completion of construction, the Project infrastructure (e.g., solar panels, access roads, equipment pads, and Substation) will be sit on approximately 110 acres of the 513-acre site. The limit of the construction area will be approximately 159 acres (Project Area). 129 acres will be cleared for construction and operation of the Project.

C. Description of the Facility

The Project will include 116,766 solar panels. Each panel is a 405-watt panel. The proposed solar panels will be a mono or poly-crystalline design. Chinook plans to install Eagle HC 72 405 W panels manufactured by Jinko. However, the panel supplier and model may change and will be finalized closer to construction. It is possible that solar panels selected during construction may differ from those identified in the Application based on conditions such as availability and technological advances.

The Project will be located adjacent to two transmission line corridors, one containing a 345-kV line owned by Eversource and the other containing two 115-kV lines owned by National Grid. Chinook proposes interconnecting to the existing National Grid I-135 Line, which is the northeastern most of the two lines. The proposed interconnection location is approximately

2.9 miles south of Eversource's Fitzwilliam Substation. The Project will interconnect to the National Grid line through a new substation located onsite, directly southwest of the existing transmission line corridor and approximately 0.2 mile west of Fullam Hill Road. Other than the short conductors used to loop the existing transmission line, no new electric transmission lines will be required.

A new substation is necessary to connect the Project to the electric distribution grid. The substation area consists of approximately two (2) acres. Equipment within the substation will include circuit breakers, bus support, disconnect switches, a lightning mast, the 115/34.5-kV main transformer, metering equipment, and 115-kV A-Frame structures to support electric lines leaving the substation. The tallest equipment will be the lightning masts, which are self-supporting and approximately 55 feet tall. Short underground 115-kV bonds will loop the existing National Grid 115-kV transmission line into the substation.

D. State Agencies with Jurisdiction or Regulatory Authority

The Application identifies state agencies having jurisdiction or other regulatory authority over any portion of the project. The agencies identified in the Application are:

1. New Hampshire Department of Environmental Services (DES), Water Division-Alteration of Terrain (AOT) Permit.
2. New Hampshire Department of Natural and Cultural Resources, Division of Historical Resources (DHR). National Historic Preservation Act §106 process.
3. New Hampshire Department of Transportation-oversize/overweight vehicles.
4. New Hampshire Department of Safety-blasting permits.
5. New Hampshire Department of Safety, Division of Fire Safety, Office of The State Fire Marshal (Fire Marshal) - Enforcement of applicable fire and safety codes.

The Application also contains documentation demonstrating that the Applicant held at least one pre-application public information session in Cheshire County in accord with RSA 162-H: 10, I. App. p. 37, App. Appdx. 10. The Applicant provided notice to Fitzwilliam and other affected municipalities on October 18, 2020 and October 21, 2020. *See* App. Appdx. 11.

E. Applicant's Financial Technical and Managerial Capacity

The Application identifies the ultimate parent company of Chinook to be NextEra Energy, a Fortune 200 company reporting consolidated revenues (at the time of the Application) of approximately \$16.7 Billion¹. Chinook is 100% owned by NERH which in turn is owned by other subsidiary companies all owned by NextEra. The initial capitalization and financing for Chinook is provided by NECH which is described as the entity that holds ownership of and provides funding for NextEra's competitive energy market subsidiaries. *See* App. p. 41, App. Appdx. 12. Initial construction and operation of the project will be financed entirely by NECH which at the time of the Application had more than \$4 Billion of net available liquidity consisting of cash and revolving credit facilities with 66 banks. App. p. 41. After commercial operation Chinook may seek external limited or non-recourse financing which may include a mixture of debt and equity. App. p. 42.

The Application contains information describing the key personnel for Chinook responsible for project development and operations. *See* App. p.44, 49. The Application also describes Chinook's consulting team. *See* App. p. 45. Chinook's application relies on the financial, managerial and technical expertise of its parent companies. The Application asserts

¹ NextEra's business is divided between its ownership of Florida Power and Light (FPL) a company that mostly provides regulated utility services and NEER which operates the unregulated competitive energy businesses of NextEra. *See* App. Appdx. 12.

that NEER has a presence in the renewable energy industry for more than 30 years and currently manages a net electric generating capacity of approximately 20,700 MW. 2300 MW of that capacity is solar generation. The Application describes the Coolidge Solar Project in Ludlow Vermont and Sanford Airport Solar in Maine as representative projects demonstrating the Applicant's managerial and technical expertise. App. p. 42.

F. Information About RSA 162-H:16, IV (c) Criteria.

The Application, consistent with N.H. Admin. R. Site 301.04 through 301.09, provides information pertaining to the statutory criteria that must be considered by the Subcommittee. *See* RSA 162-H:16, IV (c).

1. Aesthetics

The Application contains a Visual Impact Assessment (VIA) prepared by T.J. Boyle Associates. *See* App. Appdx. 13. The VIA concludes that the Project will not cause an unreasonable adverse effect on aesthetics. The VIA concludes that the low-profile nature of the facility, its location, and natural vegetative screening rendered visibility of the Project to be minimal. App. p. 51- 52, App. Appdx. 13, p. 39. The VIA identifies the summit of Mt. Monadnock as the resource with the most substantial area of visibility. A photo-simulation of the Mt. Monadnock view is contained in Appendix 13, p. 88. The VIA reports that the distance of the Project from the resource mitigates the visibility and the Project is not a prominent element in the view from Mt. Monadnock. App. p. 52, App. Appdx. 13, p. 39.

2. Historic Resources

The Application describes efforts undertaken by the Applicant to determine whether the Project will have impacts on historic resources. App. p. 52-53, App. Appdx. 14A-14I.

Phase I-A and I-B archeological assessments were performed by the Applicant's consultant, TRC. The Phase I-B assessment found no pre-contact period cultural or archeological material. App. p. 52. The assessment identified two homesteads in the historic period sites, neither of which were determined to be eligible for the National Register of Historic Places. App. p. 52. A quarried boulder was also identified in the historic period site. No cultural material was derived from sub-surface testing near the boulder. The Application includes a concurrence from the Division of Historic Resources (DHR) indicating no need for further archeological assessment. *See App.p.52, App Appdx. 14D.*

The Application reports that the Project was determined to have no direct or indirect effects on above-ground historic resources. App. p. 53. The Application contains a letter from DHR concurring in this determination. *See App. Appdx. 14I.*

3. Environment

The Application contains information addressing the impacts of the Project on the environment. The Application addresses air quality, App. p. 53-54, water quality, App. p. 54 -56, wildlife and natural communities, App. p. 56-58, and wetlands, water bodies and vernal pools, App. p. 58-64.

a. Air Quality

The Application states that the facility will not generate air emissions and therefore will not have an adverse impact on air quality. *See App. p.53.* The Application includes a greenhouse gas analysis prepared for TRC which compared the project to the addition of a natural gas power plant of similar size. The analysis concludes that a reduction of greenhouse gas emissions in a range between 84% and 91% will be achieved over a 30-year project life when compared to an

additional gas power plant. The assessment also claims that potential greenhouse gas emissions associated with converting the currently forested land to solar electricity production are “significantly smaller than the life cycle GHG emissions associated with electricity from average U.S. natural gas generation.” App. Appdx. 15A, p. 7.

b. Water Quality

i. AOT Permit

The Application claims that the Project will not have an adverse impact on regional water quality. App. p. 54. In support of this claim the Application includes an AOT permit application to DES. *See* App. Appdx 4. The Application asserts that the Project is designed to meet the standards set forth in the AOT permit application.

The Application and the AOT permit application confirm the Applicant will use best management practices (BMPs) to manage hazardous substances, regulate blasting activities. The Application contains a sample Spill Prevention Control and Countermeasures (SPCC) plan designed to adhere to US Environmental Protection Agency standards. App. p. 55, App. Appdx. 15B. The Application also reports adherence to the standards and BMPs cited in the DES publication: “Rock Blasting and Water Quality Measures That Can Be Taken to Protect Water Quality and Mitigate Impacts” (DES 2010). App. p. 55.

To control erosion and sedimentation the AOT permit application indicates Chinook will employ BMPs based on consultation with DES, the DES Stormwater Manual and the DES AOT Bureau’s Stormwater Design Guidance for Large Scale Solar Arrays published in January 2019 (Solar Guidance 2019). App. p. 54.

The Project will create new impervious areas on the site, including pads, pilings, racks and solar panels along with access roads and the proposed substation. App. p. 55. New

impervious surfaces measure approximately 330,000 square feet. App. p. 55. The AOT permit application contains a stormwater management plan that is based on the DES Stormwater Manual and the Solar Guidance 2019.

ii. Wetlands Waterbodies and Vernal Pools

The Application locates the project in the Miller watershed and the Priest Brook and Tarbell-Millers River sub-watersheds. App. p. 54. The site includes an expanse of forest wetland complex and several wetlands, vernal pools and intermittent and ephemeral streams. App. p. 54. Twenty-three (23) wetlands, six streams, eight non-jurisdictional drainages and 49 vernal pools were identified within the Project plan control area. App. p. 59. The Application asserts that the Project has been designed to avoid direct wetland and stream impacts. *Id.* Construction will not occur in wetlands. The Project plans require the crossing of two streams using open bottom concrete box culverts in accordance with DES stream crossing guidelines. App. p. 59. The Applicant also provided a vernal pool survey. *See* App Appdx. 15H, p 10 – 14. No threatened or endangered species known to use vernal pools were documented in the existing vernal pools. App. 59. The Application states there will be no direct impacts to natural vernal pools or natural modified pools as result of the construction or operation of the project. *Id.*

c. Wildlife and Natural Communities

Relying on consultation with the New Hampshire Natural Heritage Bureau (NHB) the Application reports there are no exemplary natural communities or rare plant species within the vicinity of the project. *See* App. p. 58.

The Application also includes a forest composition survey which identified six forested cover types. The area that will be disturbed by the project is within an area selectively cut over the last five years and is approximately 60% forested. The Application notes that current

landowners have performed ongoing timber harvesting within the project footprint area. This harvesting is not under the control of the Applicant. Timber harvesting has occurred since the forest composition survey was performed. A drone flight with photographic and video footage was taken in May 2019 to gain a more current appreciation of the status of the forest lands. *See App Appendix 15 G*

After consultation with the NHB, the Application reports there are records of wood turtle and Blanding's turtle within the project area. Both turtles are species of special concern in New Hampshire. Blanding's turtles are listed as endangered by the state of New Hampshire. *See App. p. 56.* The Application indicates that measures will be taken to minimize the potential for turtles entering the disturbed project area. During construction there will be a perimeter silt fence which should exclude the turtles from the area. Small ramps will be installed intermittently on the interior of the perimeter to allow turtles to exit the exclusion area. *See App. p. 57.* The Application also states the Applicant will use a seed mix to re-vegetate the project following construction which will consist of low growing plant species.

After consultation with the US Fish and Wildlife Service (USFWS) the Applicant indicates that one protected species under the Endangered Species Act has potential to occur near the project - the northern long eared bat. The Applicant undertook a summer presence/absence survey in 2016. *See appendix 15 E.* During the study big brown bats, Eastern red bat, hoary bat and little brown bat (endangered) were identified. The little brown bat was not detected in high numbers representing only 3% of all bat passes recorded during survey. *See App. p. 58.*

Based upon the presence/absence survey report the Applicant agreed with NHFG that tree removal for the Project will occur only in the winter, between November 1 and March 31. to

avoid impacts to roosting bats during the summer maternity seasons. *See* App. p. 58. The wildlife reports are in Appendices 15A through 15G in the Application.

4. Public Health & Safety

The Application addresses public health and safety in the context of sound impacts, fire safety, emergency response, on-site safety issues, and decommissioning.

a. Sound Impacts.

The Application includes an acoustic study prepared by Tech Environmental. The study included baseline sound measurements and acoustic modeling. *See* App. p.65. App. Appdx. 16B. The acoustic modeling included 51 residential receptors surrounding the site. The results of the acoustic study were compared to the New Hampshire Site Evaluation Committee and the Town of Fitzwilliam noise ordinance incremental sound limits. The predicted change in sound levels would range from 0 to 6 dBA above the existing baseline ambient L₉₀ daytime and nighttime sound levels and there would be no tonal sounds predicted at the residential receptors. *See* App. Appdx. 16B, p.1. Based on the study the Application asserts that the Project will not produce noises that cause an unreasonable adverse effect on the local area or the general public.

b. Fire Safety, Emergency Response and Compliance with Standards

The Application states the Project will comply with the National Electric Safety Code (NESC) including Articles 690 and 750 which address Solar Photovoltaic Systems and Interconnected Electrical Power Production Services, respectively. App. p. 65. Compliance with NESC includes assuring that all components are appropriately labeled, and that safety signage is maintained within the facility. NESC also requires that all personnel be qualified, and that all equipment be tested and inspected. App. p. 65.

The Application includes an Emergency Response and Fire Safety Plan. App. Appdx. 16D. At the time of Application, the plan was not complete and required further consultation with Fitzwilliam about shutdown and locking procedures to secure the inverters. *See App. Appdx. 16D, p. 2.* Under the plan as it existed at the time of Application, the NEER Renewable Operations Control Center (ROCC) will detect equipment faults which will then lead to dispatch of NEER on-site personnel to investigate. There is no fire suppression system for the inverters located on-site. De-energization or isolation of the solar system may occur remotely but disconnection of the power blocks at each inverter within the project must be done manually by a trained NEER representative. *Id.*

The Application specifies that Project roads will be 12 feet in width with turn-around areas with 50-foot radii to enable the operation of emergency response vehicles such as fire trucks. App. p. 67. The solar panel rows and fencing will be sufficiently spaced to permit access in the event of an emergency response. *See App. p. 67.* The Project area will not be opened to the public and the solar arrays and substation will be cordoned with a seven-foot-tall fence. App. p. 68.

c. Decommissioning

The estimated useful life of the Project is 30 years². The Application contains a decommissioning plan. *See App. Appdx. 16C.* The decommissioning plan provides for the disconnection and removal of all electrical equipment, solar panels, racks, collection lines, fencing and underground components to a depth of three feet. *See App. p. 66, App. Appdx. 16C, p. 3-4.* The Application seeks a waiver from N.H. Admin. R., Site 301.08 (a)(8)(f) which requires removal to a depth of four feet. App. p. 66.

² As is the case with most renewable energy installations, the useful life may be extended depending upon the advancement of technology and prospects for replacement of the proposed components in the Project

Under the plan, decommissioning shall be complete within 2 years after the Project is discontinued. The estimated cost of decommissioning is \$900,432.00 (based on cost after 20-year life of project) without salvage/recycling value. App. Appdx. 16C, p. 6. Chinook will provide decommissioning funding assurance before commencement of construction consistent with conditions in the Certificate. App. p. 66.

5. Orderly Development of the Region

The Application states the Project will not unduly interfere with the orderly development of the region because it is “consistent with and complimentary to existing land uses, promotes economic development, expands the local tax base, and uses existing infrastructure, most notably existing electrical transmission lines.” App. p. 69. To support the statement the Application identifies the master plan documents for Fitzwilliam and the towns of Rindge and Jaffrey and planning documents published by the Southwest Regional Planning Commission (SWRPC).

The Application notes that the Project is consistent with the Fitzwilliam Master Plan which in pertinent part seeks to encourage energy conservation by not unduly restricting alternative energy sources. App. p. 71. The Project as proposed achieves that goal by providing a low impact source of alternative energy that does not stress existing infrastructure such as public schools and traffic capacity. *See* App. p. 71. The Application also claims that the Project is consistent to the maximum extent practicable with other Fitzwilliam ordinances such as Fitzwilliam’s rural character ordinance, solar ordinance, noise ordinance and wetlands protection overlay ordinance. *See* App. p. 72.

The Application references the master plans for Jaffrey and Rindge and notes that the Project is consistent with green energy and economic diversity goals set out in those master plans.

The Application references and contains portions of three planning documents published by SWRPC:

1. Comprehensive Economic Development Strategy for Southwest New Hampshire (2015) App. Appdx. 17B.
2. Monadnock Region Future: Aplan for Southwest New Hampshire. App. Appdx. 17C.
3. Southwest New Hampshire Natural Resources Plan (2014). App Appdx. 17D.

According to the Application, the Project is consistent with goals set forth in the plans in particular with respect to the need for clean, renewable, and reliable energy sources and to reduce the environmental impacts of fossil fuels.

According to the Application, the land uses near the Project consist of timber harvesting and agriculture with a smattering of small industrial uses and scattered residential neighborhoods. App. pp. 72-73. The Applicant does not currently plan to continue timber harvesting in the project area. App. p. 73. The Application states the Project will not affect local hiking trails, hunting, fishing or boating opportunities in the region.

Appendix 18 contains a detailed economic assessment of the Project. *See* App. Appdx. 18. Over 20 years the Project is projected to generate \$18 million in increased economic activity for the state. App. p. 74. During construction, the Project will create 127 full time jobs generating earnings of \$10.7 million and leading to an added economic value of \$10.4 million. App. p. 74, 78 App. Appdx. 18, p. 8, 31. Project operations are projected to support 4-6 full time jobs generating earnings of \$0.2 – 0.4 million in earnings, annually, along with added economic value of \$0.4 - \$0.5 million. *See* App. p. 74, 78; App. Appdx. 18, p. 32.

Besides the employment and economic benefits, the Application reports that the Project will generate \$160,000 annually in utility property taxes for the state and increased tax revenue

for Fitzwilliam from an anticipated annual Payment in Lieu of Taxes (PILOT) agreement. App. p. 74.

The economic assessment accompanying the Application also addresses the impact of the Project on surrounding real estate value. *See* App. Appdx. 18 p. 36-58. The assessment includes a literature review, a comparison study with a small solar facility in Moultonborough and a real estate parcel analysis of 96 properties that may have a view of the Project. Based on this approach the assessment concludes the Project is “unlikely to negatively impact the overall local real estate markets.” App. Appdx. p. 51.

The Application asserts that the Project will not have an adverse impact on tourism and recreation. App. p. 76. In reaching this conclusion, the Application includes a literature review, an intercept study at the summit of Mt. Monadnock in 2019, an inventory of tourism and recreation-oriented businesses, an assessment of economic indicators such as the rooms and meals tax, a traffic impact assessment and a discussion of potential impacts to hunting, fishing and wildlife watching. *See* App. Appdx. 18 p. 59-76. The literature review revealed few, if any, studies of solar projects on tourism and recreation. App. Appdx. 18 p. 61. The Mt. Monadnock intercept report determined that a low number of visitors were influenced by the proposed Project. App. Appdx. 18 p. 63. The room and meals tax assessment and inventory of tourism businesses indicates that Fitzwilliam may be more heavily reliant on tourism and recreation than other portions of Cheshire County. App. Appdx. 18 p. 63-64.

The economic assessment compares a small solar installation in Moultonborough to conclude there will be little traffic impact. App. Appdx. 18 p. 72. The economic assessment also addresses the small loss of some lands that may be used by hunters. Overall, the analysis in

Appendix 18 supports the conclusion there will be few negative impacts on tourism and recreation because of the construction or operation of the Project.

The Application states that the Project may affect community services in Fitzwilliam in two areas. Fitzwilliam may need short term assistance for consultants to study the impacts of the project during the permitting process. In addition, the Application notes that Fitzwilliam may be under-resourced in emergency planning and fire response. The Application suggests these impacts will be mitigated through the negotiation of an MOU and a PILOT agreement with Fitzwilliam. At the time of application neither the MOU nor the PILOT negotiations were complete. *See App. p.77.*

Based on the foregoing including the information and studies included in App. Appdx. 18 the Application concludes that the Project will not unduly interfere with the orderly development of the region.

IV. STATE AGENCY REPORTS

Consistent with statutory requirements, several state agencies filed preliminary and/or final reports with the Subcommittee. DES has permitting jurisdiction with respect to issuing an alteration of terrain permit. Other state agencies with regulatory or consultative authority include New Hampshire Fish & Game Department (NHFG), NHB, and DHR.

A. Fish & Game Department

On November 27, 2019, NHFG provided a preliminary report. The report summarized that the Applicant and the agency engaged in consultation and continue to cooperate. This report recognized that NHFG has no direct permitting authority and was acting in a consultative capacity. NHFG is also required to consult with DES, AOT Bureau, regarding an AOT permit. The final decision of DES on the AOT permit is discussed *infra*. However, as part of that

decision, DES required the Applicant to provide revised plans that incorporate all NHFG recommendations related to state or federal threatened or endangered species. The Subcommittee has received no further communication from NHFG. However, the Applicant did provide recommendations from NHFG to DES. *See App. Ex. 84.* The NHFG recommendations are included in the AOT permit and the final plans for the facility. *See App. Ex. 82.*

B. Natural Heritage Bureau

NHB, on November 27, 2019, determined that, for its purposes, the Application was complete. NHB identified Blanding's turtle a state endangered species and wood turtle a state species of special concern within the vicinity of the project. *See App. Ex. 40.* On March 15, 2019, NHB provided a memorandum indicating the site is unlikely to support rare plant species. *Id.* The Subcommittee has not received further communication from NHB.

C. Department of Safety - Office of the Fire Marshal

On November 26, 2019, the Fire Marshal provided an email to the Administrator. That email indicated that Fitzwilliam requested the assistance of the Fire Marshal in enforcement of the state fire code at the proposed project. The email further provided that Fitzwilliam will submit a written request for the fire marshal to enforce the building code at the project under RSA 155-A:7. The Subcommittee has not received further communication from Fire Marshal.

D. Division of Historical Resources

The Subcommittee received reports from DHR on November 28, 2019, December 4, 2019, January 28, 2020 and April 17, 2020. On November 28, 2019, DHR reported that the Application is complete for its purposes. On December 4, 2019, DHR reported that the project would have no effect on historical property. On January 28, 2020 DHR filed a report indicating that Fitzwilliam

School Number Two is located outside the area of potential effect. On April 17, 2020, DHR filed a report with the Subcommittee confirming that future archaeological studies are unnecessary and that the project area contains no historic properties affected. DHR requested three conditions should a certificate of site and facility be granted:

- 1) If the Applicant changes plans for the proposed project and such changes lead to newly discovered effects on historic properties, the Applicant shall consult with the NHDHR to resolve any adverse effects to such properties.
- 2) If any unanticipated archaeological resources, historic properties, or other cultural resources are discovered as a result of project planning or construction, the Applicant shall consult with NHDHR to determine the need for appropriate evaluative studies, determinations of National Register eligibility, and/or mitigative measures, if needed, to resolve adverse effects.
- 3) Authorizing the NHDHR to specify the use of any appropriate technique, methodology, practice or procedure associated with archaeological, historical, or cultural resources affected by the Project, however, any action to enforce the conditions must be brought before the Committee.

The conditions requested by DHR are typical and consistent with the consultative nature of DHR's work.

E. Department of Environmental Services-Alteration of Terrain Bureau

The Project requires an AOT permit from DES. The Applicant and DES have been engaged in a lengthy process of negotiation which ultimately led to a final report from DES recommending approval of the AOT permit with certain conditions.

On April 3, 2020, DES filed a progress report with draft permit conditions and requesting additional information from the Applicant. The progress report contained 22 requests for additional information. The most serious concerns expressed in the progress report centered on the fact that the alteration terrain plans were based on guidance issued regarding impervious solar panels by DES in 2019 rather than the document entitled "2020 Guidance with Regard to

Impervious Solar Panels and Modeling of Solar Arrays” issued by DES on February 22, 2020 (2020 Guidance). The progress report indicated that the plans did not include recommendations from NHFG nor an accurate statement of the concerns of NHB.

On July 31, 2020, the Applicant wrote a letter to DES objecting to the requirement that the plans be based on the 2020 Guidance rather than the 2019 Guidance. The Applicant asserted that the 2019 Guidance was in effect when the plans were developed and provided to DES and the Site Evaluation Committee. DES responded to the objection on August 18, 2020 stating that the 2019 Guidance did not include comprehensive guidance regarding the hydrologic modeling of solar arrays and that the DES administrative rules, Env-WQ 1500, likewise, did not include guidance regarding hydrologic modeling solar arrays. Therefore, DES advised the Applicant it was using its best engineering judgment in requiring compliance with the 2020 Guidance. The letter included invitation for further consultation.

Subsequent consultation occurred. On August 31, 2020, DES issued a final decision recommending approval of the AOT permit as part of the Certificate of Site and Facility with conditions. The AOT decision contained 20 conditions, three of which required additional information from the Applicant. The Applicant provided additional information to DES. On September 18, 2020, DES issued its final updated decision recommending approval of the AOT permit.

V. POSITION OF THE PARTIES

A. Applicant

Chinook argues that the Project meets all of the statutory criteria necessary to grant a Certificate. In support of the Application, Chinook submitted the following pre-filed testimony:

- Heath Barefoot, Project Director, NEER (Overall description of Project and the Application.)

- Joseph Balzano, Assistant Treasurer, NextEra (Financial capacity of the Applicant))
- Paul Callahan, Director of Project Engineering and Construction, NEER (Technical and Managerial capacity of the Applicant including engineering and construction)
- Dana Valleau, Environmental Specialist, TRC and Kara Moody, Environmental Project Director, Stantec (Natural environment, water quality and wildlife, including state agency permitting.)
- Joseph Persechino (engineering and stormwater consultant)
- Michael Buscher (visual consultant)
- Marc Wallace (sound consultant)
- Karen Mack (archaeologist)
- Stephen Olausen (architectural historian)
- Matthew Magnusson (economist)
- Lise Laurin (sustainability consultant)

A summary of the testimony follows.

1. Heath Barefoot

Heath Barefoot is a Project director at NextEra. Mr. Barefoot filed direct and supplemental testimony. Before employment at NextEra, he was primarily engaged in the investment banking industry.

Mr. Barefoot's direct testimony covers many areas of the Application including but not limited to background information about Chinook Solar, general descriptions of the Project and the alternatives considered. His testimony also touches on the financial, technical, and managerial capability of the Applicant and the statutory factors this committee must consider in determining whether a Certificate should be granted.

Mr. Barefoot's direct testimony describes the Applicant's corporate structure consistent with the statements in the Application. Barefoot, p. 3. Barefoot also describes the site for the proposed facility. This testimony notes the proximity to the two existing transmission corridors

as outlined in the Application. Barefoot p. 4. His direct testimony also reiterates that the site consists of undeveloped forest lands subject to timber harvesting for many years. Barefoot p. 4.

Relying on section H1 of the Application, Mr. Barefoot generally describes the configuration of the Project. Barefoot p. 5. He notes this Application seeks approval not just for the generation facility, but also for the interconnection with the transmission grid. Barefoot p. 6. The interconnection will require an interconnected line to cross a right-of-way owned by Eversource located between the Project and National Grid transmission corridor. He explains that to interconnect to the distribution system the Project will require a substation. The Applicant is contractually obligated to transfer the land interests associated with substation to a National Grid entity³. Barefoot, p. 7.

Once operating Mr. Barefoot indicates that the Project is designed with a 30 MW capacity. Barefoot p. 7. The average annual net capacity factor is estimated to be 20%. *Id.* Given the capacity factor, Mr. Barefoot estimates that the facility will generate approximately 52,000 MW of electricity per year - enough energy to power approximately 7000 average New Hampshire homes. Barefoot p. 8.

Relying on section H2 of the Application, Mr. Barefoot testified there are other possible alternative locations for the Project in Fitzwilliam which were ruled out for various reasons including the presence of extensive wetland resources. Barefoot p. 8. He also testified, consistent with the narrative in the Application, that numerous alternative layouts or designs were considered. *Id.*

After making a general statement that the Project follows the objectives of RSA 162-H, Mr. Barefoot testified that the Project is consistent with New Hampshire's renewable portfolio

³ While not addressed in Mr. Barefoot's direct testimony, the Applicant requested the Subcommittee to exercise preemptory authority and to subdivide a portion of the site to house the substation.

standards law RSA 362-F:1 because it employs renewable energy resources and provides fuel diversity to the state in the region. Barefoot p. 10. Barefoot also made a general statement that the Project will reduce greenhouse gases and therefore is consistent with the state's regional greenhouse gas initiative, RSA 125-O: 19. Barefoot p. 11. He also testified that the Project generally follows state planning and zoning laws that support renewable energy Projects and prohibit the unreasonable limitations on such Project by municipal zoning powers. *See* RSA 672:1, III-a and RSA 674:17, I (J). Barefoot p. 11.

To address the financial capability of the Applicant, Mr. Barefoot again reiterates the corporate structure of Chinook's parent companies. He relies on the testimony of Joseph Balzano for details and Section B of the Application. He also notes that the Public Utilities Commission has recognized that NextEra, through its affiliate Florida Power & Light Company has the financial, technical, and managerial experience to own and operate energy facilities in New Hampshire. Barefoot p. 12.

The witness relies upon the fact that NextEra, through its affiliates, manages more than 90 solar Projects in North America as a fact supporting the proposition that NECH has adequate technical and managerial capabilities to assure construction and operation of the Project. Mr. Barefoot notes that Chinook will have on-site presence and NextEra personnel will be heavily involved in the oversight and management of the construction process. Barefoot p. 12-13

To support his claim that the Project will not unduly interfere with the orderly development of the region, Mr. Barefoot describes extensive communications between Chinook, Fitzwilliam and its various boards and commissions. He describes his outreach as beginning as early as 2016 when the development of the Project was initiated by a company known as Ranger Solar. Barefoot p. 13-14. Mr. Barefoot's testimony also relates a series of consultations with state

and federal agencies as part of the ongoing development of the Project. Barefoot p. 14. Mr. Barefoot notes that the Project is in sync with the Fitzwilliam master plan which indicates and supports the need for renewable energy development. Barefoot p. 14. He also notes that the Project is consistent with statements in various publications of the Southwest Region Planning Commission including: *Monadnock Region Future: A Plan for Southwest New Hampshire* and *Southwest New Hampshire Natural Resources Plan*. Barefoot p. 15. Barefoot also relies on the prefiled testimony and economic impact analysis authored by Matthew Magnuson and contained in Appendix 18 to the Application. *See* App. Ex. 57; Barefoot, p. 15.

In supplemental testimony Mr. Barefoot notes that a memorandum of understanding has been reached with Fitzwilliam. Barefoot Supp. p. 5. In addition, he notes that the town and the Applicant are working on a PILOT agreement. Barefoot Supp. p. 6. The MOU and the PILOT also support his claim that the Project will not unduly interfere with the orderly development of the region.

In addressing public health and safety Mr. Barefoot notes that the Project is remotely located. Barefoot p. 16 Mr. Barefoot also references a sound study conducted by Marc Wallace, noting the study demonstrates the Project will conform to local and state sound standards. Barefoot p. 16-17. Mr. Barefoot notes that the MOU with Fitzwilliam contains stipulations that address public health and safety including construction related issues, public access, road usage, noise restrictions and environmental compliance. Barefoot p. 17. An emergency response and fire safety plan for the Project is contained in the Application at Appendix 16. Barefoot p. 18. Mr. Barefoot testified that the Applicant has a decommissioning plan located in the Application at Appendix 16 C. Mr. Barefoot does recognize that Chinook is requesting certain waivers from the requirements of decommissioning. Those waivers include a waiver from the requirement to

remove infrastructure at depths less than 4 feet below ground and to remove piles shallower than 3 feet which are concreted into rock. Barefoot p. 18.

Relying on portions of the Application and other witness's testimony, Mr. Barefoot states the Applicant has studied and addressed the impact of the Project on aesthetics, historic sites, air and water quality in the natural environment. He notes these matters are addressed in various appendices within the Application and in testimony of other witnesses. Barefoot p. 19. Likewise, in addressing whether the Project will serve the public interest Barefoot relies on the testimony and economic report of Matthew Magnuson and the greenhouse gas report of Lise Laurin. Barefoot p. 20 – 21.

In supplemental testimony Mr. Barefoot addressed issues raised during public hearings and in public commentary. His supplemental testimony indicates that the Applicant does not have current control over how the land is used. Therefore, any clear-cutting or logging ongoing at the site is being conducted by current landowners. He testified this does not violate the statute which prohibits commencement of construction on the Project until a Certificate is issued. Barefoot Supp. p. 3-4.

He notes that as result of the additional sound analyses and the agreements in the MOU, Fitzwilliam no longer has any issues regarding potential noise from the Project. Barefoot Supp. p. 4-5.

With respect to the subdivision of the substation land Barefoot's supplemental testimony notes that the Applicant and the Town agree on this view. He reports that the Town agrees to exercise good faith to support efforts to accomplish recording of the deeds, plans or certificates related to the transfer. He notes that the Applicant continues to ask the Subcommittee to use

preemptory authority to grant a Certificate approving the subdivision so the substation land can be transferred to National Grid and recorded in the Registry of Deeds. Barefoot Supp. p. 5-6.

In his supplemental testimony, Mr. Barefoot indicates that a large generator interconnection agreement with ISO-New England is pending final legal review⁴. Barefoot Supp. p. 6.

2. Joseph Balzano

Joseph Balzano is the assistant treasurer for NextEra. In his direct testimony he describes the financial plans proposed by the Applicant to construct and decommission the Project. He reports that the construction and decommissioning of the Project does not rely on external financing. Capital funding for the Project will be provided by NECH a subsidiary of NEER. He reports that NEER has liquidity of \$4.2 billion. Balzano p. 4. He testified this is more than sufficient to fund construction and decommissioning of the Project on the books of the company. *Id.*

Regarding decommissioning Mr. Balzano testified that the Applicant will provide a financial assurance mechanism for \$900,432 based upon the decommissioning plan submitted by the Applicant and accepted by the Town. Balzano page 5. In his supplemental testimony, Mr. Balzano reports that the method of financial assurance will be a surety bond, at the request of Fitzwilliam. Balzano Supp. p. 2.

3. Paul Callahan

Paul Callahan is the director of Project engineering and construction for NEER. Mr. Callahan's testimony describes the technical and managerial experience of NEER. Callahan p. 2. Mr. Callahan testified that NEER is invested in more than \$83 billion of capital consisting of

⁴ The Applicant did file its system impact study with ISO New England under seal.

more than 20,000 MW of operating assets which include approximately 2800 MW of solar energy generation. Callahan p. 3.

Mr. Callahan reports that an engineering procurement and construction (EPC) contractor has not yet been hired by Chinook. Selection of an EPC contractor will occur in the fourth quarter of 2020. Callahan p. 3. Mr. Callahan's testimony also gives a general overview of the construction timeline and references sections F-6 and section G-10 of the Application for more details on the construction process. *See also* Appendix 5 to the Application. Callahan p. 4. Mr. Callahan's testimony confirms the information contained in section H1 of the Application identifying the laydown area that will be located at the south end of the Project. Callahan p. 5. The Project will be subject to a spill prevention control and countermeasures plan as set forth in Appendix 15 B of the Application. *Id.* Mass blasting is not expected to be required. Callahan p. 6. Mr. Callahan testified that access to the site will be off of Fullam Hill Road. Callahan p. 6.

With respect to management and technical capacity Mr. Callahan testified that NEER operates more than 2500 MW of generating capacity in New England alone. NEER assets in New England include the Seabrook Station nuclear power plant, the Coolidge Solar Project in Ludlow Vermont and the Sanford Airport Solar Project in Sanford Maine which is currently under construction. Callahan p. 6-7.

Callahan testified that NEER operating assets are monitored remotely through NextEra's Renewable Operation Command Center (ROCC) which optimizes performance and control of the Project operations. Callahan p. 7. Callahan explains the ROCC is staff with certified operators 24 hours per day, 365 days per year. The ROCC monitors real-time performance of the Project and will remotely detect any abnormal operating conditions. Callahan p. 7. In addition, regional local operations and maintenance staff will provide support, as necessary. Callahan p. 8.

Mr. Callahan retired from the company before the adjudicative hearings. His testimony was adopted as part of the Supplemental Testimony of Keith Delallo, NextEra Project Engineer.

4. Keith Delallo

Keith Delallo replaced Paul Callahan as project engineer. Mr. Delallo filed supplemental testimony that adopts the direct testimony of Mr. Callahan. In addition, Mr. Delallo's testimony includes an update on geotechnical work, including soil borings performed where the substation is to be located. Mr. Delallo's supplemental testimony also addressed construction related issues pertaining to the MOU with Fitzwilliam. Delallo p. 2-3.

In his supplemental testimony Mr. Delallo reiterated the Applicant's request for a waiver of Committee rules pertaining to decommissioning. Delallo p. 3. The Applicant seeks a waiver of N.H. Admin R. Site 301.08 (d) (2) requiring all underground infrastructure at depths less than 4 feet below grade to be removed from the site during decommissioning. Delallo claims that because the NESC requires conductors to be installed at a minimum of 36 inches below grade compliance with the rule would cause significant ground disturbance upon decommissioning. Mr. Delallo also addresses the second waiver request. In that request, the Applicant asks that the Subcommittee approve the waiver of the rules and allow solar racking piles concreted into rock to be cut off at the interface to the concrete in lieu of removing the pile to a depth of 3 feet. Mr. Delallo points out that the remaining infrastructure is inert and consists of standard building materials. Delallo p. 4.

In his testimony Mr. Delallo advised the Subcommittee that the Applicant is considering a change in the use of solar panel technology. The Application currently calls for mono-facial modules. The Applicant is considering the use of bifacial modules. Relying on the opinion of

Michael Buscher, Mr. Delallo opined that a switch to bifacial models would not affect the visual impacts of the project. Delallo p. 3

Mr. Delallo's testimony included a summary of the geotechnical report regarding soil borings where the substation is to be built. The geotechnical report is attached as Exhibit B to Delallo's testimony and indicates that the soil comprises approximately one (1) foot of topsoil under which is approximately 30 feet of silty sand soil and bedrock and at an average depth of 31.44 feet. Delallo p. 5. The geotechnical report addresses various considerations for construction including fill compaction requirements (Attachment B, p. 7), design parameters for shallow foundations and deep foundations (Attachment B, p. 9, 14); foundation construction considerations (Attachment B, p. 11); seismic considerations (Attachment B, p. 15) frost considerations (Attachment B, p. 18) and other design considerations. Nothing in Mr. Delallo's testimony or the geotechnical report would prohibit construction of the substation where planned.

5. Michael Buscher

Michael Buscher is a professional landscape architect who owns TJ Boyle Associates LLC. He has testified on previous occasions before Site Evaluation Committee. Here, Mr. Buscher prepared a visual impact assessment on behalf of the Applicant. *See App. Appdx. 13.*

Mr. Buscher's testimony described how the fieldwork was done for the visual impact assessment and the results of the assessment. In his testimony Mr. Buscher explained that the assessment was conducted in accordance with N.H. Admin. R. Site 301.05 and 301.14. The fieldwork began with identification of the surrounding scenic resources. A GIS viewshed analysis was conducted to identify areas of potential visibility. The GIS analysis included a Terrain Viewshed (an analysis based solely on landforms) and a Vegetated Viewshed which

factored in the effect of vegetation, structures and other obstructions to visibility. Buscher p. 4. Field investigations were then conducted to verify the results of the mapping and to photographically document various points of interest. Mr. Buscher then created visualizations of how the Project would look from certain viewpoints. Buscher p. 4. Besides the terrain mapping and visualizations Buscher also conducted a user intercept study at the summit of Mount Monadnock. Buscher p. 5

Of the 1277 potential scenic resources within a 6-mile radius of the Project only 54 had a potential view of the Project after terrain and other obstructions were considered. Further analysis, according to Buscher, revealed that only two resources, the Pinnacle Hiking Trails and Mount Monadnock would be affected by the Project. According to Buscher, the intercept study revealed that only 50% of hikers surveyed on Mount Monadnock could identify any difference between the photo simulations with and without the Project and none could identify the Project as a solar facility. Based on his fieldwork and the intercept study Mr. Buscher opined the Project will have no unreasonable adverse impact on aesthetics. Buscher p. 5.

Mr. Buscher also filed supplemental testimony. In his supplemental testimony Mr. Buscher explained that the low profile of the Project decreased the likelihood of significant visibility from private properties. He determined the possible impact too be so limited that site visits would be unlikely to result in meaningful images or photographic simulations. Therefore, his visual impact assessment determined it was impractical to provide photo simulations from private property. Buscher Supp. p. 2.

Mr. Buscher also testified that any change made in the choice of specific solar panel used by the Applicant would not affect his aesthetic review so long as the solar array configurations

remain at a twenty-five-degree (25°) tilt or less and twelve (12) feet in height or less. Buscher Supp. p. 3-4.

6. Karen Mack

Karen Mack is employed as a senior archaeologist with TRC. Her direct testimony describes the efforts of the Applicant in undertaking a phase IA and 1B archaeological investigation of the project area.

Her initial background research included a review of historic maps which suggested there were several historic resources within the project boundaries including homesteads and a school. Mack p. 3-4. Ms. Mack also performed a desktop geological review of the project area to examine Precontact and Historical archaeological sensitivity. Mack p. 4. The initial review yielded four areas in the project boundaries with potential to contain Precontact. archaeological resources. Mack p. 4. As a result of the Phase IA analysis Ms. Mack recommended further investigation including 85 test pits with an additional 15 test pits if artifacts were found in the sensitive areas for the Precontact period. She also recommended 200 test pits for testing the Historic period in two of the archaeologically sensitive areas. Mack p. 5. DHR agreed with the recommendations of the Phase IA assessment. Mack p. 5. The complete Phase IA assessment is contained in the Application, Appendix 14B.

The Phase 1B assessment was then conducted which included a combination of intensive walkover inspection and a shovel test pit program. A sketch of the overall test area was made. Photographs were taken. Spatial data regarding the test pits was collected, postprocessed and corrected. Project maps were then created. *See* Mack p. 5-6. As result of the foregoing activities the Phase 1B survey concluded that the area would not contain sensitive or cultural resources. Further investigation was not recommended. Mack p. 6. DHR agreed with that assessment in a letter dated December 3, 2018 included in Appendix 14 D the Application.

Ms. Mack also submitted supplemental testimony. Fitzwilliam hired an expert to review the archaeological assessments. That expert identified one area of concern regarding the location of a 19th century schoolhouse mentioned in the Phase IA report. Fitzwilliam's expert explained that the exact location of the schoolhouse was never conclusively established. On behalf of the Applicant, Ms. Mack undertook a further review. The review revealed that the schoolhouse location fell outside the Project boundary and the area of potential effect. Mack Supp. p. 2. The review was submitted to the Subcommittee on February 5, 2020. On January 28, 2020 DHR submitted a letter to the Subcommittee indicating concurrence with the results. Mack Supp. p. 2-3. DHR still believes that a finding "no historic properties affected" is appropriate. Mack p. 3.

In supplemental testimony Ms. Mack recites three conditions that DHR has recommended to the Subcommittee:

1. If the Applicant changes plans for the proposed project and such changes lead to newly discovered effects on historic properties, the Applicant shall consult with the NHDHR to resolve any adverse effects to such properties.
2. If any unanticipated archaeological resources, historic properties, or other cultural resources are discovered as result of project planning or construction, the Applicant shall consult with NHDHR to determine the need for appropriate evaluative studies, determinations of National Register eligibility, and/or mitigative measures, if needed, to resolve adverse effects.
3. Authorize NHDHR to specify the use of any appropriate technique, methodology, practice or procedure associated with archaeological, historical or cultural resources affected by the project, however, any action to enforce the conditions must be brought before the committee.

Ms. Mack testified that the Applicant agrees with the DHR conditions. Mack Supp. p. 3.

7. Stephen Olausen

Stephen Olausen is the executive director and senior architectural historian for the Public Archaeological Laboratory (PAL). Mr. Olausen has previously testified before the Site Evaluation Committee.

Mr. Olausen's testimony described the efforts of the Applicant to identify historic architectural properties and to determine if the Project will cause any adverse effects on such properties listed or eligible for listing in the National Register of Historic Places.

Under Mr. Olausen's supervision, historic architectural properties were surveyed. A Project Area Form was completed and filed with DHR. The study area for the form consisted of the 2-mile radius surrounding the Project site. Olausen p. 5. This area included the Fitzwilliam Town Center. *Id.* DHR agreed with the study area. *Id.* The architectural survey results are reported in Appendix 14F of the Application. Olausen p. 6.

Within the study area, the Fitzwilliam Historic District, the Third Fitzwilliam Meetinghouse, and Fitzwilliam Town Library/Daniel Spaulding House were noted as being listed in the National Register or eligible for individual listing in the National Register. Olausen p. 6. After identifying these properties, no further survey was recommended because it was determined that the Project itself is unlikely to affect these properties. This finding was reviewed by DHR's Determination of Eligibility Committee (DOE). The DOE determined that no further inventory was required but did request an effects evaluation study for the Historic District. Olausen p. 7.

Mr. Olausen's testimony described the Fitzwilliam Historic District at pages 7 through 8 of his testimony. The District is listed in National Register under criterion C in areas of architecture and community planning. Olausen p. 7. Because of the distance of the Historic District from Project site it was determined there would be no direct or indirect effects on the District. Therefore Mr. Olausen concentrated on potential views to and from the District. It was determined that the Project would not be visible from any location in the District with the possible exception of the belfry tower in the Third Fitzwilliam Meetinghouse. Olausen p. 9. The

belfry is not accessible to the public and was not designed to function as a viewing point. *Id.* In addition, vegetation and tree line would interrupt such a view. Olausen recommended a finding of “no historic properties affected.” DHR concurred with this assessment on July 29, 2019. The concurrence is included in Appendix 14 I to the Application. Olausen p. 10.

8. Lise Laurin

Lise Laurin testified about the effect of the Project on air quality. The crux of this witness’s testimony is that the proposed solar facility will cause between 84% and 91% less greenhouse gas emissions than a similarly sized natural gas plant over a thirty-year period. Laurin p. 6. She estimates the “payback period” recognizing some deforestation, to be three (3) years. *Id.*

Ms. Laurin further testified that the Project will assist in achieving the goal of the NH Renewable Portfolio Standard (RSA 362-F) of 25 % renewable sources of energy by 2025. Laurin p. 6. The Project will provide fuel diversity through a local renewable source. *Id.* She also opines that the Project is consistent with the Regional Greenhouse Gas Initiative (RGGI), RSA 125-O:19 because it will reduce greenhouse gas emissions. Laurin p. 7. Ms. Laurin opined that the Project will not have an adverse effect on public health and safety but rather will have a positive effect. Laurin p. 7.

9. Joseph Persechino

Joseph Persechino is senior project manager at Tighe and Bond (T&B). T&B is an engineering and environmental services consultancy retained by the Applicant to consult on site design, permitting planning and decommissioning. Mr. Persechino’s testimony addressed the civil design for the project, soils analysis, the AOT permit application, stormwater issues, and decommissioning. Persechino p. 3.

According to Mr. Persechino's testimony, the civil design for the project is based upon detailed field studies including topographic and boundary surveys, wetland and resource studies, archaeological studies and soil surveys. Persechino p. 4. As a result of these detailed studies, the site design uses logging roads where practical and adds additional access roads as needed. *Id.* Mr. Persechino states he engaged in multiple consultations with the DES Alteration of Terrain Bureau and thereafter moved forward to design the solar array layout using stormwater best management practices in accordance with the 2019 Solar Guidance from DES. Persechino p. 4.

Mr. Persechino explained that construction will be conducted in phases to limit the amount of contiguous cleared land at any given time. Sedimentation basins and swales will be constructed before the installation of other major components of the project. Persechino p. 5. The design also calls for 7-foot-tall fencing with six-inch wildlife passage gaps at the bottom and intermittent breaks in fenced areas that allow migration of larger wildlife. Persechino p. 5.

Mr. Persechino points out that the entire AOT permit application is included in the Application at Appendix 4. Persechino p. 5. He notes that the AOT permit application includes a compilation of narratives, site civil drawings, GIS figures and site-specific soil maps. There is also a detailed stormwater analysis and design. Persechino asserts that the civil design was based upon the DES 2019 Solar Guidance and the New Hampshire Stormwater Manual.

In his testimony Mr. Persechino testified that he, with Dennis Moore, created the decommissioning plan contained in Appendix 16 of the Application. Persechino p. 6. In his testimony Mr. Persechino reviews the reasons the Applicant seeks a partial waiver from the decommissioning requirements of Site 301.08 (d)(2) d. The Applicant seeks a waiver of the requirement that all underground infrastructure at depths less than 4 feet below grade be removed from the site. The Applicant asks to be permitted to remove infrastructure to a depth of 3 feet. In

making this request Persechino notes that the National Electrical Code requires cable burial at a minimum of 3 feet below grade. He testified that removal to a depth greater than three feet can cause significant ground disturbance. Mr. Persechino explained the second part of the waiver request applies to those instances where the array rack piles are concreted into rock. Mr. Persechino points out that removing the piles can cause greater disturbance by requiring drilling or possible blasting of rock to remove the piles. Persechino p. 7-8.

Regarding the decommissioning plan Mr. Persechino testified that the plan includes a detailed opinion of probable cost to remove the infrastructure from the site. He further indicates that the Applicant will provide financial assurance in the form of a surety bond to secure the costs of decommissioning. Persechino p. 8

Mr. Persechino's ultimate opinion is that the AOT permit application, the filed design plans and decommissioning plan all demonstrate the project will not have an adverse effect on water quality, the natural environment and public health and safety. Persechino at p. 8.

As discussed *infra*, DES was not, at first, satisfied with the design in the AOT permit application. DES determined the design contradicted the agency's 2020 Solar Guidance. In addition, DES was concerned that the AOT permit application did not demonstrate sufficient consultation with the NHB or NHFG regarding threatened or endangered species and rare and exemplary natural communities.

In response, Mr. Persechino filed supplemental testimony. In that testimony he indicated that the Applicant consulted with DES regarding the AOT permit application but at the time of the supplemental testimony those discussions were not complete. Persechino Supp. p. 2. At the adjudicative hearing Persechino reported that DES ultimately issued an updated final recommendation approving the AOT permit application. Tr. Day 3, p. 48-49; *See* App. Ex. 92.

In his supplemental testimony Mr. Persechino identified one change to the internal project roads made in response to the prefiled testimony of Counsel for the Public's consultants. He explained that the original design included two roads encircling the wetlands to access the southern arrays. Counsel for the Public's consultants criticized the use of two roads. Mr. Persechino stated that the Applicant agreed to remove the road in the eastern portion of the Project. Persechino Supp. 3. This modification will have less impact on wetland buffers and less disturbance of terrain while still maintaining the ability to access the panels when necessary. Persechino Supp. p. 3. However, a vehicle turnaround must be added to the end of the existing roadway. Mr. Persechino testified that updated plans will reflect this change.

Mr. Persechino also testified there is a minor change in the location of the substation. The structure will be moved approximately 23 feet to avoid a newly delineated wetland. Persechino Supp. p. 3.

10. Dana Valleau

Dana Valleau is an environmental specialist employed by TRC. TRC is an environmental consultancy employed by the Applicant. Mr. Valleau has a degree in wildlife management and a law degree. He testified on prior occasions before the Site Evaluation Committee on matters pertaining to impacts on the natural environment, wildlife, and habitat.

Mr. Valleau's testimony reported that he supervised several studies submitted by the Applicant including the wetlands delineation, the vernal pool survey, forest composition survey and the bat survey. Valleau p. 5. The wetlands and vernal pool survey can be found in Appendix 15 H. The forest composition surveys can be found in Appendix 15 G. The original bat survey is contained in Appendix 15 E.

In his testimony Mr. Valleau located the Project within the Millers River watershed, and the Priest Brook Tourville-Millers River sub-watersheds. Mr. Valleau described the site as forested in various stages of succession and subject to significant logging and timber harvesting. Valleau p. 6. Under his direction, wetlands and vernal pool surveys were conducted spanning 497 acres. The surveys revealed 23 wetlands. The wetlands were categorized as: ten (10) forested wetlands; seven (7) scrub shrub wetlands; and six (6) herbaceous emergent wetlands. Valleau p. 7. Mr. Valleau testified that the Project is not expected to directly affect wetlands. He explained the Project was carefully planned and designed to avoid direct impacts. Mr. Valleau testified that Project minimized wetland crossings, avoid construction work in the 75- foot wetland buffer; and to maximize distance of any construction from Scott Brook. Valleau p. 8. In addition, Mr. Valleau testified that the Applicant's contractors would use best management practices for working near wetlands and water bodies. Valleau p. 9.

Mr. Valleau testified that the vernal pool survey identified forty-nine (49) vernal pools. Twenty-nine (29) vernal pools are classified as unnatural. Fifteen (15) vernal pools are classified as natural-modified, and five (5) vernal pools classified as natural vernal pools. Valleau claims that the Project will have no direct impact on any natural or natural-modified vernal pools on the site. Valleau p. 10.

Mr. Valleau testified about the forest composition study commissioned by the Applicant. The primary forest is hemlock-beech-oak-pine. He testified that the forested areas are in various stages of succession due to timber harvesting. Valleau p. 10. The forest composition survey revealed no significant natural communities or rare plants. *Id.*

Mr. Valleau described the site as being "undeveloped and forested, and it includes diverse natural resources that provide ample haven for a wide diversity of wildlife." Valleau p.

13. In his initial testimony Mr. Valleau stated that wildlife mitigation is unnecessary on the site, but the Applicant was considering designating portions of the overall site to conservation⁵.

Desktop surveys and inquiries with NHB revealed no known critical habitat within Project site. However, USFWS identified a potential for the northern long-eared bat (federally threatened) to occur within the vicinity of the Project. Valleau p. 13. NHB identified wood turtles (state special concern) and Blanding's turtle's (state endangered) within the Project vicinity but at a distance from the Project site. Valleau p. 15.

Mr. Valleau's testimony described efforts designed to mitigate any impact on turtles. *See* Valleau p. 15. During construction, a perimeter silt fence will surround the construction area. The silt fence should prohibit turtle entry into the construction area. Valleau p. 15. Small ramps will be constructed for turtles to exit the construction area should they enter. *Id.* An environmental monitor will perform daily inspections of the construction area for turtles within the construction area. If within this construction area they will be relocated. Valleau p. 15-16. All construction personnel will be trained on best management practices if turtles are encountered within the Project area. Valleau p. 16.

The Applicant commissioned an acoustic bat survey to determine whether the endangered northern long-eared bat is present within the Project area. Mr. Valleau explained the details of the survey at pages 16 and 17 of his testimony. The northern long-eared bat was not detected during the survey. Valleau p. 16. However, little brown bat (state endangered) was detected in approximately 3% of all passes. Valleau p. 17. Mr. Valleau testified that the impact of the Project on bats comes from the habitat loss associated with timber clearing that may eliminate some

⁵ In the MOU with Fitzwilliam, p. 9 the Applicant agreed to deed those portions of the site not subject to the facility to an appropriate conservation organization. The MOU also requires conservation easements upon decommissioning of the disturbed site.

roosting trees. However, habitat loss from timber harvesting is considered a low-ranking threat to the northern long-eared bat and the little brown bat. Valleau p. 17. He reports that white nose syndrome is the primary driver of bat decline in the region. Valleau p. 17-18. To mitigate any impact to roosting bats during the summer maternity season, tree removal for Project construction will occur in the winter between November 1 and March 31. In addition, the Project will maintain forested corridors that connect potential foraging habitats such as wetlands. Valleau p. 18.

Mr. Valleau's original testimony did not mention deer winter yards.

Mr. Valleau filed supplemental testimony in response to the testimony and report of Counsel for the Public's environmental consultants, Arrowwood Environmental LLC (Arrowwood). Valleau's supplemental testimony covered deer winter yards, additional bat studies, wetland buffer impacts, blasting monitoring plans and programmatic agreements with New Hampshire Fish and Game. Valleau Supp. p. 2-3.

Regarding deer winter yards Mr. Valleau explained in his supplemental testimony that the Applicant consulted with NHFG and deer winter yards were never an issue of concern. Mr. Valleau testified there is considerable doubt whether the disturbed areas within the Project contain deer winter yards. Valleau Supp. p. 4. Valleau criticized the Arrowwood testimony because it relied on a modeling exercise conducted by a master's level candidate student at UNH and was not a study that was commissioned by NHFG. Valleau Supp. p. 4. Mr. Valleau also recited a conversation he had with the NHFG deer biologist. He reported that the biologist advised him that the UNH mapping, although good at identifying some habitat characteristics, is not effective in predicting the area utilized by deer. Valleau Supp. p. 4. Mr. Valleau also testified that the deer winter mapping is not a regulatory document. He testified that Chinook will set

aside the non-disturbed area of the Project site, consisting of 342 acres, for conservation.

Valleau Supp. p. 4.

Counsel for the Public's consultants asserted that one of the solar arrays causes unnecessary potential impacts to the wetland buffer zone because it is accessed by two roads. In response to this claim the Applicant modified its design to include only one road - the existing road. The Applicant has agreed that the new access road to the array will be removed from the design. Valleau Supp. p. 5.

Because Arrowwood raised a concern regarding the need for a blasting plan or programmatic agreement to mitigate the effects on bats, the Applicant undertook a further bat survey. Valleau Supp. p. 7. The species of concern were the eastern small-footed that and the northern long-eared bat. Both are endangered. Various rock formations where bats may be were identified and detectors were employed as part of the study. The additional study did not detect the presence of the northern long-eared bat or the eastern small-footed bat. Although a single pass of each bat was identified during the study, presence could not be confirmed during manual inspection. Valleau Supp. p. 8. Six species of bat were confirmed at the Project during the survey including the big brown bat, eastern red bat, hoary bat, silver haired bad, little brown bat, and tricolored bat. Valleau Supp. p. 8. Based upon the original presence/absence study and the supplemental study conducted in August 2020 Mr. Valleau finds that a blasting plan or programmatic agreement is unnecessary to mitigate impact on either the northern long-eared bat or the eastern small-footed bat. Valleau Supp. p. 7.

In response to public comments about the lack of reptile and turtles survey Mr. Valleau testified that surveys were not required by NHFG. He also testified that the Project adopted recommended practices to minimize potential for impacts to rare turtles. Chinook will install a

perimeter silt fence around the construction area and take other measures as discussed above.
Valleau Supp. p. 9.

The ultimate opinion of Mr. Valleau is that the Project will not have an unreasonable adverse impact on the natural environment, including wildlife species, rare plants, rare natural communities, wetlands, vernal pools, and other exemplary natural communities.

11. Marc Wallace

Mark Wallace is the vice president of Tech Environmental. Under his direction sound modeling was conducted at the Project site. An acoustic study report was prepared and is contained in the Application at Appendix 16B. *See App. Ex. 47.*

The purpose of the acoustic study was to determine whether the Project will comply with the Committee's sound standards and the Fitzwilliam noise ordinance.

Ambient sound monitoring was conducted at the Project site. Twenty-four (24) hours of unattended ambient sound monitoring data was collected. Weather conditions were favorable for ambient monitoring. Wallace p. 5. The acoustic modeling included fifty-one (51) residential receptors in locations surrounding the site. Wallace p. 5. According to Mr. Wallace the modeling was conservative. Wallace p. 6

The result of the acoustic study demonstrated that operation of the fifteen (15) inverters and the substation within the Project boundaries will comply with both Site Evaluation Committee and Fitzwilliam sound limits. The predicted change in sound levels as result of the Project range from 0 to 6 dBA above the existing baseline ambient L 90 daytime and nighttime sound levels with no tonal sounds predicted at residential interceptors. Wallace p. 6.

In his testimony Mr. Wallace also analyzed the existing Eversource transformer which caused complaints by town residents in the past. Wallace p. 7. Mr. Wallace noted that the Eversource transformer is much larger with significantly different specifications and sound level

ratings than the Project transformer. Mr. Wallace points out that the solar facility does not operate at night and the transformer will be operating at a lower workload level during the nighttime. Wallace p. 7.

Mr. Wallace also filed supplemental testimony.

In his supplemental testimony Mr. Wallace describes performing additional ambient sound monitoring in the northeast quadrant of the Project site. He obtained additional baseline sound data which will be useful in determining whether the operation of the Project creates any future sound impacts. Wallace Supp. p. 2-3.

In his supplemental testimony Mr. Wallace also reported his analysis of sound generated from NextEra's Coolidge solar PV substation in Ludlow Vermont. This is a similar Project. The analysis tried to estimate the total sound power of the transformer and compare them to his initial study. Wallace Supp. p. 3. The result demonstrated sound impacts near the solar Project would be imperceptible. Wallace Supp. p. 3.

Mr. Wallace also conducted additional sound modeling factoring in certain sound mitigation alternatives including a quieter transformer and various types of sound barriers. The results of that additional modeling indicated that neither alternative would be likely to achieve a significant change in sound levels at the residential uses. Wallace Supp. p. 4.

Mr. Wallace's overall opinion was that the Project would not have an unreasonable adverse impact on public health and safety due to sound.

12. Matthew Magnusson

Mr. Magnusson prepared a comprehensive economic assessment of the Project. *See App. Appdx. 18.* Magnusson p. 3. In his testimony he explained the methodology and results of his analysis.

The Project is projected to generate \$18 million in increased economic activity for the state over the next twenty (20) years. Magnusson p. 4. The greatest benefits will occur during the construction period as the Project generates 127 FTE jobs. The construction jobs will provide approximately \$10.7 million in wages and support \$10.4 million in economic value for New Hampshire. Of the construction FTE jobs, 51 are direct construction jobs, 31 are expected to be indirect jobs and 38 anticipated induced jobs. Magnusson p. 4. The construction jobs are anticipated to pay an average annual salary of \$62,625, which exceeds New Hampshire's average annual wage by 9%. Magnusson p. 5. Once the Project is operating 4-6 FTE jobs are expected. The FTE jobs during the operating term are expected to generate \$0.4 million to \$0.5 million in economic value annually. *Id.*

Mr. Magnusson also testified about expected tax revenues from the Project opining that the Project will generate \$160,000 annually in state utility taxes. \$300,000 is expected to be paid to Fitzwilliam annually under a PILOT agreement. Magnusson p. 7.

Mr. Magnusson addressed the impact of the Project on property values in the region. He conducted a literature review and concluded that the literature does not support widespread consistent patterns of detrimental impacts to residential property values. Magnusson p. 10. His review of residential property transactions near a small solar installation owned by New Hampshire Electric Coop in Moultonborough did not demonstrate a negative impact on family home residential values. Based on his review and his Moultonborough analysis Magnusson concludes that the Project will not adversely affect real estate values in the region. *Id.*

Mr Magnusson also assessed the potential effect of the Project on local tourism and the provision of community services. While literature regarding the impact of solar facilities on tourism is scarce, Magnusson relied on some studies of wind farms and tourism. Those studies

suggest there is no conclusive evidence to suggest that renewable energy facilities affect Tourism. Mr. Magnusson also analyzed the tourism and recreational opportunities that exist in the region. He concluded they are not the type of activity that would be negatively affected by the Project. Magnusson p. 19.

Mr. Magnusson's final opinion was that the Project would have a positive economic impact in the region and would not adversely affect real property values or tourism. He concluded that the Project would not unduly interfere with orderly development of the region. Magnusson p. 24.

B. Counsel for the Public

Counsel for the Public retained three experts who testified at the adjudicative hearing. Michael Lew Smith and Jeffrey Parsons are employed as a senior botanist and senior biologist, respectively, at Arrowwood. Both men testified before the Site Evaluation Committee in the past. They prepared a report entitled, *Chinook Solar Project Independent Review of Significant Wildlife Habitats, Aquatic Resources, Natural Communities and Rare, Threatened & Endangered Species* (Arrowwood Report). Dr. D. Scott Reynolds is population biologist and physiological ecologist on the science faculty at St. Paul's School. He is the managing partner of North East Ecological Services (NEES). Dr. Reynolds prepared a report entitled, *Impact Assessment of the Chinook Solar Project on Bats*. All three witnesses filed joint testimony (CFP Testimony)

1. Michael Lew-Smith & Jeffrey Parsons (Arrowwood)

The testimony of Lew-Smith and Parsons summarized the Arrowwood Report. CFP

Ex. 2. There are many areas where Arrowwood did not complain about wildlife or habitat. Arrowwood determined that the Project will not have an unreasonable adverse effect in these areas:

Moose concentration areas and habitat. CFP Test. p 5; Arrowwood Report p. 9-10.

Mast stands (bear habitat). CFP Test. P. 5; Arrowwood Report p. 10-11.

Wildlife corridors. CFP Test. p.5; Arrowwood Report p. 12

Wetlands. CFP Test. p. 5; Arrowwood Report p. 13-18.

Streams. CFP Test. p. 6 Arrowwood Report p. 18-20

Vernal pools. CFP Test. p. 6; Arrowwood Report p. 20 – 26

Rare threatened or endangered animals (turtles). CFP Test. p. 7; Arrowwood Report p. 30. (The Arrowwood Report makes recommendations for additional conditions designed to implement and improve the avoidance and minimization of impact.)

Regarding bats the testimony indicated that the Project, subject to the proposed winter only tree clearing condition, is unlikely to have population level effects on little brown bats (state endangered) or northern long-eared bats (federally threatened; state endangered). CFP Test. p. 7. If the tree clearing condition is enforced there is not expected to be an unreasonable adverse impact on the species studied except for the eastern small-footed bat. Further discussion regarding bats was set out in the NEES Report. CFP Ex. 2.

The Arrowwood testimony raises concerns about:

Deer wintering areas. CFP Test. p. 4; Arrowwood Report 3-9

Unnecessary roadwork. CFP Test. p. 6; Arrowwood Report p. 17-18

Rare and exemplary communities. CFP Test. 6, Arrowwood Report p. 26- 28

Bat sampling and study measures. NEES Report, passim.

Eastern small-footed bat. CFP Test. p. 8; NEES Report p. 12-13, 16.

a. Deer Wintering Areas.

The Arrowwood testimony concluded that the Applicant failed to adequately consider deer wintering areas within the Project area. CFP Test. p. 4, Arrowwood Report p. 3 – 9. The Arrowwood testimony pointed to an area in the southern portion of the Project containing evidence of deer wintering activity. Arrowwood report p. 7. The Arrowwood Report also identified an area in the northern portion of the Project would have supported deer wintering areas before recent clear-cutting. Arrowwood Report p. 7. The Arrowwood Report criticized the Applicant's study measures for failing to review and rely on NHFG deer area mapping and the mapping efforts of a graduate student at the University of New Hampshire. Arrowwood Report p. 9.

Based on field assessment the Arrowwood witnesses asserted there is evidence of deer wintering areas in the northern portion of the Project where the forest was primarily hemlock and would have provided adequate conditions for deer wintering yards. But, that portion of the Project area was recently clear-cut. Arrowwood Report p 7-8. The Arrowwood field assessments determined that the southern portion of the Project area is less likely to support deer wintering areas because the vegetation is mostly white pine and deciduous trees. However, in this area there was evidence of deer feeding such as browsing, bark stripping and winter deer scat. Arrowwood Report p. 7. The report opined that deer mostly likely used the area for opportunistic feeding and then sheltered elsewhere in more favorable cover. Arrowwood Report p. 7.

Based on the field assessment and the requirements of deer for adequate winter habitat the Counsel for the Public's experts argued that the Applicant has not presented sufficient evidence that deer wintering areas would not be unreasonable adversely impacted by the Project. Arrowwood Report p. 9. The experts claim it is impossible to quantify the deer wintering habitat

lost to clear-cutting on the Project property but that future losses could be mitigated by protecting and conserving the remaining areas of coniferous forest in the northern portion of the property beyond the limits of disturbance. Arrowwood Report p. 9

b. Unnecessary Roadwork.

The CFP witnesses criticize the original design of the Project roads and the effects on the wetland buffer zone. CFP Test. 6; Arrowwood Report p. 17. The testimony notes that two roads will be constructed to service access to the southern array field. They opine that limiting the access to a single road would protect the wetland buffer⁶. *Id.*

c. Rare and Exemplary Communities.

The CFP witnesses claimed that the Applicant failed to establish the Project will not have an unreasonable adverse effect on rare and exemplary communities. The witnesses recognize and agree that the Project lands include hemlock-beech-oak-pine forest and hemlock forest. These forest compositions are not considered exemplary unless they are “high quality” examples. Despite the extensive logging on site the witnesses claim that an appropriate assessment must look at the forest beyond the bounds of the property. Because the Applicant did not extend its survey off-site the witnesses opine that the Applicant failed to meet its burden to prove no unreasonable adverse effect on the rare and exemplary communities. Arrowwood Report p. 28

d. Rare Plants.

The Arrowwood witnesses described the Applicants efforts to identify rare, threatened, and endangered plants as inadequate. CFP Test. p. 7. Although NHB determined there were no occurrences of rare plants and that the habitat was unlikely to support rare plants the Arrowwood

⁶ The Applicant has agreed to eliminate one road in response to this criticism.

witnesses assert the size of the Project requires the Applicant to conduct a rare plant inventory. Arrowwood Report p. 30 -31. They testified that scientific knowledge of the distribution and abundance of rare plants is incomplete. They claim that research demonstrates that rare plants occur not only near other known populations of rare plants. Finally, they argue that rare species are occasionally found in unusual areas. Arrowwood Report p. 31. The Arrowwood witnesses also objected to statements made by the Applicant's representatives. They claim a statement suggesting that a rare plant assessment was done is false. They also claim that statements made by Mr. Valleau about rare plant surveys are likewise false because no surveys actually occurred. *Id.* The Arrowwood witnesses argue that the Applicant has failed to meet its burden of proof on this issue.

2. D. Scott Reynolds, Ph.D. (Bats)

The Arrowwood witnesses and the NEES Report, CFP Ex. 2, generally criticize the sampling efforts undertaken by the Applicant for all species of bats. But the testimony and the NEES Report recognize that habitat loss is not considered a major impact for most species of bats in New England. Habitat management and conservation are not likely to stabilize or recover the decreasing population. NEES Report p. 15. The NEES Report credits the Applicant's commitment to limit tree removal to the time from November 1 through March 31. This restriction should limit the risk of an unreasonable adverse impact on all but one species of bat. NEES Report p. 16

Dr. Reynolds remains concerned with the eastern small-footed bat, a state endangered species. The NEES Report notes this species is the only hibernating species that is stable or only slowly declining. NEES Report p. 16. Eastern small foots have the most restrictive habitat requirements (rocky outcrops and talus slopes.) *Id.* The NEES Report asserts there are rock piles

stone walls and rocky outcrops within the Project site that would provide habitat for the species. They also note that the Project site will likely require blasting methods during construction which might harm such habitat. NEES Report p. 16.

Dr. Reynolds recommended that the Applicant be required to prepare a blasting and stone feature alteration plan with the approval of NHFG. The plan should include site specific data and assess impacts, habitat conservation and enhancement for the small-footed bat. If such a plan is devised and followed, he believes the Project will not unreasonably adversely affect the eastern small-footed bat. NEES p. 31.

3. Kavet & Rockler – Economic Impact

Counsel for the Public also presented prefiled testimony, CFP Ex. 3, and a short report on the economic impacts of the Project, CFP Ex. 4. The report was prepared by Thomas Kavet and Nicholas Rockler. Although not always for the same reasons, Kavet and Rockler concur with the economic impact study and testimony presented by the Applicant. They testified that the Project would create meaningful economic benefits for the State especially during the construction phase. Thereafter there will be small but positive economic benefits. CFP Ex. 4.

C. Town of Fitzwilliam

The Town of Fitzwilliam was an intervenor in the proceeding. However, the Town chose not to participate in the adjudicative hearings. The Town did not present witnesses nor cross examine witnesses. The Town did negotiate a Memorandum of Understanding with the Applicant. App. Ex. 67. The Applicant submitted the MOU, without objection, as an exhibit at the adjudicative hearing. The MOU will become a condition of the Certificate.

D. Stipulations and Agreements

The Subcommittee received stipulations of fact and requested findings jointly filed by the Applicant and Counsel for the Public. See App. Ex. 80, 81. The Subcommittee also received a Memorandum of Understanding between Fitzwilliam and the Applicant. App. Ex. 67.

In assessing stipulations and agreements the Subcommittee keeps in mind its obligations under RSA 162-H. The Subcommittee must assess each stipulation and determine if it is reasonable based upon the record. The Subcommittee may never adopt a stipulation merely because the parties agree. RSA 162-H requires a Subcommittee to consider not only the views of the parties but also state agency reports, and the views expressed by members of the public regardless of their intervention status. It is up to the Subcommittee to determine the ultimate weight to be applied to any stipulation or agreement regarding findings of fact.

1. Fitzwilliam Memorandum of Understanding

The MOU between Fitzwilliam and Chinook encompasses many facets of the siting, construction, and operation of the proposed facility. The agreement includes but is not limited to these important matters:

- Communication with Fitzwilliam and the public
- Emergency response and interaction with Fitzwilliam's first responders
- Use of public roads and restoration after construction.
- Construction of emergency access roads and temporary roads.
- Re-pavement of Fullam Hill Road
- Stormwater prevention
- Construction schedule and operations including hours for construction and limits on idling of equipment
- Construction of a substation and subdivision of the substation property.

- Project Noise
- Project Decommissioning
- Environmental, aesthetic and historical resource standards
- Liability and indemnification
- Conservation easements for Project and non-Project Lands
- Restoration of project land
- Resolution of disputes

The Subcommittee reviewed the MOU and concluded that it is consistent with purposes of RSA 162-H and that it is supportive of the findings that the Subcommittee must make under RSA 162-H:16. The MOU, to the extent that it is not inconsistent with other specific conditions adopted by the Subcommittee, will become a part of the Certificate.

2. Stipulation Between Chinook and Counsel for the Public

On August 20, 2020, the Applicant and Counsel for the Public filed a document entitled Stipulated Facts and Requested Findings of the Applicant and Counsel for the Public. App. Ex. 89. This stipulation, relying on the economic impact assessment prepared by Matthew Magnuson, the updated economic impact assessment, and the prefiled testimony of Mr. Magnuson concludes that the project will not unduly interfere with the orderly development of the region. In reaching this stipulation the Applicant and Counsel for the Public stipulate to certain facts. The economic impact assessment demonstrates a net positive economic effect to the town of Fitzwilliam, Cheshire County and the state of New Hampshire. Counsel for the Public and the Applicant stipulate that project's low visibility profile and vegetative screening will mitigate any negative impacts to property values, tourism and recreation. They also stipulate that

the negotiation of the PILOT agreement between Fitzwilliam and the Applicant will contribute to a positive economic impact.

On September 4, 2020, the Applicant and Counsel for the Public filed a second stipulation. App. Ex. 81. The second stipulation again asserts that the evidence presented is sufficient to support a finding that the project will not unduly interfere with the orderly development of the region with due consideration have been given to the views of municipal and regional planning commissions and governing bodies. This stipulation is based upon the memorandum of understanding between Fitzwilliam and the Applicant.

Counsel for the Public and the Applicant also stipulated that the evidence supports a finding that the site facility will not have an unreasonable effect on aesthetics. In reaching this stipulation the Applicant and Counsel for the Public rely on the visual impact analysis and aerial photographs, App. Ex. 28, and the prefiled and supplemental testimony of Heath Barefoot, App. Ex.2, 68, and Michael Buscher. App. Ex. 7, 72.

Counsel for the Public and the Applicant also stipulate that the evidence is sufficient to support a finding that the project will not have an unreasonable adverse effect on historic sites. In reaching this stipulation the parties rely on the archaeological assessment reports, the determination effects form, and the concurrence letters received from DHR and prefiled testimony of Steve Olausen, App. Ex. 10, and Karen Mack App. Ex. 9, 74.

Counsel for the Public and the Applicant also stipulate that the project will not have an unreasonable adverse effect on sound. In reaching a stipulation they rely upon the sound study and the testimony of Heath Barefoot, App. Ex. 2, 68, Marc Wallace, App. Ex. 8,73, Joseph Persechino, App. Ex. 6, 71, Paul Callahan and Keith Delallo, App. Ex. 7, 76. They agree that the MOU between Fitzwilliam and the Applicant prohibits project noise that exceeds ambient noise

levels measured at the L 90 sound level at the nearest property lines by more than 10 DBA during normal operations. App. Ex. 67.

Counsel for the Public and the Applicant also agree that the application, including the greenhouse gas analysis and the testimony of Heath Barefoot, App. Ex. 2, 68, Lisa Laurin, App. Ex. 12, Dana Valleau, App. Ex. 5, and Joseph Persechino, App. Ex. 6, 71, all establish sufficient evidence to support a finding that the Project will not have an unreasonable effect on air quality.

The Subcommittee considered each stipulation and the MOU in deliberations.

VI. DELIBERATIONS

A. The Subcommittee Deliberation Process

After hearing testimony during the adjudicative process, the Subcommittee engaged in deliberations on October 16 and 19, 2020. The Subcommittee used RSA 162-H:16 as a structure for its deliberation. First, the Subcommittee reviewed the status of state permits. The Subcommittee then deliberated on the criteria established in RSA 162-H:16. The Subcommittee engaged in a general discussion of each subject area. Mostly, the general discussion was led by one member of the Subcommittee, followed by a discussion by the entire Subcommittee. At the conclusion of the discussion, the Presiding Officer sought a sense of the Subcommittee's position regarding that subject area. Sometimes, a non-binding "straw vote" of the Subcommittee was taken. In other cases, the sense of the Subcommittee was apparent from the discussion.

At the conclusion of its deliberations the Subcommittee voted to grant a Certificate subject to various conditions. This section of the Decision and Order summarizes the Subcommittee's deliberations on each topic.

B. State Agency Review

The Subcommittee began deliberations by reviewing the reports received from state agencies. This is done in conjunction with the purpose of the statute as expressed in RSA 162-

H:1. RSA 162-H:16, I, prohibits the Subcommittee from granting an Application for a Certificate if any of the state agencies with permitting or other regulatory authority deny authorization for the proposed activity over which it has authority. During deliberation, the Subcommittee seeks to assure that state agencies with permitting or regulatory authority have not denied authorization required for the siting, construction or operation of the proposed facility and to make sure that the requirements and conditions of the state agency permits are appropriately reflected in the Certificate.

1. Division of Historical Resources

On November 28, 2019, DHR reported that the Application is complete for its purposes. On December 4, 2019, DHR reported that the Project would not affect historical property. On January 28, 2020 DHR filed a report indicating that Fitzwilliam school number two is located outside the area of potential effect. On April 17, 2020, DHR filed a report with the Subcommittee confirming that future archaeological studies are unnecessary and that the Project area contains no historic properties affected. App. Ex. 66. DHR requested three conditions should a certificate of site and facility be granted:

1. If the Applicant changes plans for the proposed Project and such changes lead to newly discovered effects on historic properties, the Applicant shall consult with the NHDHR to resolve any adverse effects to such properties.
2. If any unanticipated archaeological resources, historic properties, or other cultural resources are discovered as a result of Project planning or construction, the Applicant shall consult with NHDHR to determine the need for appropriate evaluative studies, determinations of National Register eligibility, and/or mitigative measures, if needed, to resolve adverse effects.
3. Authorizing the NHDHR to specify the use of any appropriate technique, methodology, practice or procedure associated with archaeological, historical, or cultural resources affected by the Project, however, any action to enforce the conditions must be brought before the Committee.

After reviewing the reports from DHR the Subcommittee noted that the consultative process undertaken by DHR and Chinook was without controversy. In addition, the Committee recognized that neither the Applicant nor Counsel for the Public object to the conditions proposed by DHR. The Subcommittee voted to include the DHR conditions in the Certificate.

2. New Hampshire Fish & Game Department

On November 27, 2019, NHFG provided a preliminary report. The report stated that the Applicant and the agency engaged in consultation and continue to cooperate. This report recognized that NHFG has no direct permitting authority and was acting in a consultative capacity. NHFG is also required to consult with DES concerning the AOT permit. The final decision of DES on the AOT permit is discussed infra. However, as part of that decision DES required the Applicant to provide revised plans that incorporate all NHFG recommendations related to state or federal threatened or endangered species. The revised plan incorporating all NHFG recommendations was submitted to the Subcommittee in App. Ex. 84 and is included in the final DES AOT permit plans, App. Ex. 82 at page 15.

The Subcommittee noted the NHFG consultative process, the wildlife considerations and the conditions of the AOT plans overlap. To assure that the NHFG recommendations are followed, the Subcommittee voted to approve two conditions delegating authority to NHFG to assure the protection of wildlife. Regarding the protection of Blanding's turtle and wood turtle the following condition will be incorporated in the Certificate:

New Hampshire Fish & Game is authorized to monitor the Applicant's methods and actions relating to the protection of rare, threatened, and endangered species and species of special concern, rare and endangered exemplary communities during the construction and operation of the Project including all laydown and staging areas. New Hampshire Fish & Game is authorized to specify the use of any appropriate technique, methodology, practice or procedure approved by the Subcommittee within the certificate, as may be necessary to effectuate conditions

of the certificate addressing the protection of wildlife and rare and exemplary communities. The Applicant shall allow representatives of New Hampshire Fish & Game on the premises for the purpose of inspection and consultation as New Hampshire Fish & Game deems necessary. New Hampshire Fish & Game may modify the plans to protect Blanding's turtle and wood turtle including but not limited to any modifications to fencing, turtle ramps, and inspections deemed appropriate. Any action to enforce these conditions must be brought before the Committee

Regarding threatened and endangered bat species the following condition will be incorporated in the Certificate:

The Applicant shall consult with NHFG to create a rock feature monitoring program to be included in its blasting protocols. Once completed a copy of the rock feature monitoring program along with the blasting protocols shall be filed with the Committee.

Further discussion and consideration of wildlife issues are discussed *infra* in the context of the effects of the Project on the natural environment.

3. Natural Heritage Bureau

On November 27, 2019, NHB, determined that, for its purposes, the Application was complete. NHB identified Blanding's turtle a state endangered species and wood turtle a state species of special concern near the Project. On March 15, 2019, NHB provided a memorandum indicating the site is unlikely to support rare plant species. App. Ex. 40.

App. Ex. 40 contains the documents demonstrating the consultations between the Applicant and NHB. The NHB consultative process did not result in a denial of authority to undertake any aspect of the siting, construction or operation of the Project. However, the NHB process and findings were considered by DES in its consideration of the AOT Permit, discussed *infra*.

4. Department of Safety - Office of the Fire Marshal (Fire Marshal)

On November 26, 2019, the Fire Marshal provided an email to the Administrator. The email explained that Fitzwilliam requested the assistance of the Fire Marshal in enforcement of the state fire code at the proposed Project. The email further provided that Fitzwilliam will submit a written request for the Fire Marshal to enforce the building code at the Project under RSA 155-A: 7. The Subcommittee has not received further communication from the Fire Marshal. However, the Subcommittee did discuss that it was customary with the siting, construction and operation of electric generation projects to identify the agency responsible for fire and electrical safety and to delegate oversight authority to the agency. After that discussion, the Subcommittee voted to include the following condition as part of the Certificate:

The Applicant shall provide a copy of the final construction plans, electrical plans and emergency response plans to the Fire Marshal for reference. The Applicant shall consult with the Fire Marshal in the event of any changes to the plans. The Applicant shall cooperate with the Fire Marshal in the exercise of his enforcement authority. The Fire Marshal retains all of his powers and duties of enforcement. *See* RSA 162-H:12, IV. Any action to enforce the conditions of the Certificate must be brought before the Committee.

5. Department of Environmental Services - AOT Bureau

The Project must obtain an AOT permit from DES. The Applicant and DES engaged in a lengthy process of negotiation which ultimately led to a final report from DES recommending approval of the alteration terrain permit with certain conditions. *See* App. Ex. 92.

On April 3, 2020, DES filed a progress report with draft permit conditions and requesting additional information from the Applicant. App. Ex. 65. The progress report contained 22 requests for additional information. The most serious concerns expressed in the progress report centered on the fact that the AOT plans were based on guidance issued by DES in 2019 rather than the document entitled “2020 Guidance with Regard to Imperviousness the Solar Panels and Modeling of Solar Arrays” issued by DES on February 22, 2020. In addition, the progress report

indicated that the plans did not include recommendations from NHFG nor an accurate statement of the concerns of NHB. *See* App. Ex. 65.

On July 31, 2020, the Applicant wrote a letter to DES objecting to the requirement that the plans be based on the 2020 guidance rather than the 2019 guidance. The Applicant asserted that the 2019 guidance was in effect when the plans were developed and provided to DES and the Site Evaluation Committee. DES responded to the objection on August 18, 2020 stating that the 2019 guidance did not include comprehensive guidance regarding the hydrologic modeling of solar arrays and that the DES administrative rules, Env-WQ 1500, likewise, did not include guidance regarding hydrologic modeling solar arrays. Therefore, DES advised the Applicant it was using its best engineering judgment in requiring compliance with the 2020 guidance. The letter included invitation for further consultation.

Subsequent consultation occurred. On August 31, 2020, DES issued a final decision recommending approval of the alteration of terrain permit as part of the certificate of Site and facility with conditions. The decision contained 20 conditions. Conditions one through three required additional information to be provided to the AOT Bureau. *See* App. Ex. 86. The Applicant revised the plans accompanying the AOT Application. *See* Ex. 82. The Applicant also consulted further with NHFG and provided a wildlife assessment. App. Ex. 84, 87. After this information was provided, DES updated its final decision on September 19, 2020. *See* App. Ex. 92. The final decision clarifies that the Applicant provided the requested information and recommends that the Certificate of Site and Facility be granted with 18 additional conditions. The conditions include but are not limited to construction phasing, environmental monitoring requirements and reports, changes and amendments to construction plans, stormwater practices, and erosion control. *See* App. Ex. 92. The Subcommittee reviewed the final updated decision and

recommendation from DES and determined that the AOT permit and its conditions will become a part of the Certificate.

After reviewing the conditions in the AOT permit the Subcommittee issued the following additional condition about the monitoring and enforcement of the AOT permit:

The New Hampshire Department of Environmental Services Alteration of Terrain permit shall issue, and the Certificate of Site and Facility is conditioned upon compliance with all conditions inside the AOT permit. The Department of Environmental Services is authorized to monitor the construction and operation of the Project to ensure that the terms and conditions of the Alteration of Terrain permit are met. The Department of Environmental Services retains the authority to enforce the conditions of the Alteration of Terrain permit, *See* RSA 162-H:12, IV; however, any action to enforce the provisions of the Certificate of Site and Facility must be brought before the Committee. DES is authorized to specify the use of any appropriate technique, methodology, practice or procedure approved by the Subcommittee within the Certificate, as may be necessary to effectuate conditions of the Certificate and the conditions of the Alteration of Terrain permit.

At the request of DES, *See* App. Ex. 92, the Subcommittee also issued the following additional condition:

The conservation easements addressed in the Memorandum of Understanding between the Applicant and the Town of Fitzwilliam shall specifically provide that the purpose of the conservation easement is to conserve and protect habitat for wildlife.

C. Consideration of Statutory Criteria

In addition to considering and incorporating the reports and permits from state agencies the Subcommittee must independently consider the statutory criteria set forth at RSA 162-H: 16, IV. After deliberation, the Subcommittee determined the Project, subject to conditions, does meet each of the criteria required by statute. Based on those findings the Subcommittee approved the Application and voted to issue a Certificate.

1. Financial Managerial & Technical Capability (RSA 162-H:16, IV (a); Site 301.13):

Before the Subcommittee can issue a Certificate, it must determine whether the Applicant has “adequate financial, technical, and managerial capability to assure construction and operation of the facility continuing compliance with the terms and conditions of the certificate.” RSA162-H:16, IV (a). In addressing this statutory requirement, the Committee’s rules require the Subcommittee to consider the following:

Financial Capability (Site 301.13 (a)): (a) In determining whether an Applicant has the financial capability to construct and operate the proposed energy facility, the committee shall consider: (1) The Applicant’s experience in securing funding to construct and operate energy facilities similar to the proposed facility; (2) The experience and expertise of the Applicant and its advisors, to the extent the Applicant is relying on advisors; (3) The Applicant’s statements of current and pro forma assets and liabilities; and (4) Financial commitments the Applicant has obtained or made in support of the construction and operation of the proposed facility.

Technical Capability (Site 301.13(b)): (b) In determining whether an Applicant has the technical capability to construct and operate the proposed facility, the committee shall consider: (1) The Applicant’s experience in designing, constructing, and operating energy facilities similar to the proposed facility; and (2) The experience and expertise of any contractors or consultants engaged or to be engaged by the Applicant to provide technical support for the construction and operation of the proposed facility, if known at the time.

Managerial Capability: (Site 301.13 (c)) : (c) In determining whether an Applicant has the managerial capability to construct and operate the proposed facility, the committee shall consider: (1) The Applicant’s experience in managing the construction and operation of energy facilities similar to the proposed facility; and (2) The experience and expertise of any contractors or consultants engaged or to be engaged by the Applicant to provide managerial support for the construction and operation of the proposed facility, if known at the time.

The financial, technical, and managerial capabilities of the Applicant are described, in detail, in the Application, at pages 40-50. In further support of its financial, technical, and managerial capability the Applicant provided the NextEra Energy Annual Report (2018), App.

Ex. 26, and financial statements documenting the financial strength of the NextEra Energy. *See* App. Ex. 26, 27. At the time of the Application, NextEra Energy reported consolidated revenue in excess of \$16 Billion. The initial construction and operation of the Project will be financed entirely on the books of NECH a subsidiary of NextEra with more than \$4 Billion of net liquidity. Joseph Balzano testified that NECH has sufficient resource to finance the cost of the entire Project through its own resources. *See* Balzano p. 4.

In addition, the Applicant relies upon its parent company's ownership of the Seabrook Station nuclear power plant as well as more than 90 solar power plants as evidence that it has the technical and managerial capability to successfully construct and operate the Project. *See* Barefoot p. 12-13. The Applicant claims 30 years of experience in developing energy projects. That experience includes more than 20,000 MW of operating assets, including more than 15,000 MW of wind power, 2,800 MW of solar power, and approximately 150 MW of energy storage facilities across 33 states. *See* Callahan, p. 3.

Counsel for the Public did not present any evidence contradicting the financial, technical, or managerial experience of the Applicant and its parent companies.

In many cases before the Committee, and as is the case here, the Applicant itself is a single purpose limited liability entity that relies on the financial, technical and managerial experience and capabilities of its parent companies. The Subcommittee must consider the consequences of a change in ownership of the entity or any change in its ownership structure. N.H. Admin. R. Site 301.17 (a) requires the Subcommittee to consider whether to adopt a "requirement that the certificate holder promptly notify the committee of any proposed or actual change in the ownership or ownership structure of the holder or its affiliated entities and request

approval of the committee of such change.” The Applicant proposed the following alternative as a condition of the Certificate:

The Applicant must immediately notify the Site Evaluation Committee of any financings that create a change in ownership or ownership structure of the Applicant or its affiliated entities but that do not result in a change in the operational control of the Chinook Solar facility. For all other changes in ownership or ownership structure of the Applicant or its affiliated entities, the Applicant must immediately notify the Site Evaluation Committee and shall seek approval of the Subcommittee of such change.

The term "operational control" as used in the proposed condition set forth above has the following meaning: The authority and responsibility to manage, direct and control the day-to-day operations of the Project, excluding certain limited rights given to a passive investor that are necessary to protect its investment. These limited rights typically include, but are not limited to, incurring certain types of indebtedness, selling or transferring assets, making capital expenditures above a certain threshold, and changing the purpose of Chinook Solar, LLC.

The Applicant’s proposed condition seeks flexibility to avoid repeated appearances before the Committee when passive investors in the Project change.

After considering the Applicant’s request the Subcommittee was concerned that the use of the term “operational control” as defined by the Applicant sweeps too broadly and may exclude changes in ownership or ownership structure that should be subject to Committee review and approval. After deliberation, the Subcommittee imposed the following condition:

The Applicant must immediately notify the Site Evaluation Committee of any financings that create a change in ownership or ownership structure of the Applicant or its affiliated entities but that do not result in a change in control of the Chinook Solar Facility. For all other changes in ownership or ownership structure of the Applicant or its affiliated entities, the Applicant must immediately notify the Site Evaluation Committee and shall seek approval of the Subcommittee of such change.

The Subcommittee finds this language to be narrower and to include changes in ownership or ownership structure that should be considered and approved by the Committee.

2. Aesthetics (RSA 162-H: 16, IV (c); 301.14 (a))

Before the Subcommittee can issue a Certificate, it must determine whether the Project will have an unreasonable adverse effect on aesthetics. RSA162-H:16, IV (c). N.H. Admin. R. Site 301.14 (a) requires the Subcommittee to consider the following in its assessment of the aesthetics impacts:

- (a) In determining whether a proposed energy facility will have an unreasonable adverse effect on aesthetics, the committee shall consider: (1) The existing character of the area of potential visual impact; (2) The significance of affected scenic resources and their distance from the proposed facility; (3) The extent, nature, and duration of public uses of affected scenic resources; (4) The scope and scale of the change in the landscape visible from affected scenic resources; (5) The evaluation of the overall daytime and nighttime visual impacts of the facility as described in the visual impact assessment submitted by the Applicant and other relevant evidence submitted pursuant to Site 202.24; (6) The extent to which the proposed facility would be a dominant and prominent feature within a natural or cultural landscape of high scenic quality or as viewed from scenic resources of high value or sensitivity; and (7) The effectiveness of the measures proposed by the Applicant to avoid, minimize, or mitigate unreasonable adverse effects on aesthetics, and the extent to which such measures represent best practical measures.

There is no dispute regarding the impact of the Project on aesthetics. The Application addresses the effects on aesthetics at pages 51-52. In addition, the Subcommittee reviewed the prefiled and supplemental testimony of Michael Buscher, App. Ex. 7, 8, along with his Visual Impact Assessment, App. Ex 28. Counsel for the Public and the Applicant stipulated that the record contained sufficient evidence from which the Subcommittee could determine that the Project will not have an unreasonable adverse effect on aesthetics. Having reviewed the record, the Subcommittee agrees and finds the Project as proposed will not have an unreasonable adverse effect on aesthetics.

3. Historic Sites (RSA 162-H: 16, IV (c); 301.14 (b))

Under RSA 162-H: 16, IV (c) the Subcommittee must determine whether the Project will have an unreasonable adverse effect on historic resources. N.H. Admin. R. Site 301.14 (b) requires the Subcommittee to consider the following in its assessment of the impact on historic resources:

In determining whether a proposed energy facility will have an unreasonable adverse effect on historic sites, the committee shall consider: (1) All of the historic sites and archaeological resources potentially affected by the proposed facility and any anticipated potential adverse effects on such sites and resources; (2) The number and significance of any adversely affected historic sites and archeological resources, taking into consideration the size, scale, and nature of the proposed facility; (3) The extent, nature, and duration of the potential adverse effects on historic sites and archeological resources; (4) Findings and determinations by the New Hampshire division of historical resources of the department of cultural resources and, if applicable, the lead federal agency, of the proposed facility's effects on historic sites as determined under Section 106 of the National Historic Preservation Act, 54 U.S.C. §306108, or RSA 227-C:9; and (5) The effectiveness of the measures proposed by the Applicant to avoid, minimize, or mitigate unreasonable adverse effects on historic sites and archaeological resources, and the extent to which such measures represent best practical measures.

The Application addresses impacts on historic sites at pages 52-53. The Committee had the benefit of testimony from Karen E. Mack, a senior archeologist with TRC. Ms. Mack's testimony detailed the Applicant's undertakings to determine if the Project would impact any below-ground historical resources. The Committee also heard the testimony of Steven Olausen a senior architectural historian for the Public Archeological Laboratory. Mr. Olausen described the Applicant undertakings to determine the effects of the Project on above ground historic resources. Both Ms. Mack and Mr. Olausen engaged in the consultative process with DHR. In addition to the testimony, the Subcommittee had the opportunity to review the historic resource

products produced by Ms. Mack and Mr. Olausen⁷. Each of the products received the approval of DHR⁸.

Counsel for the Public stipulated that the record provides sufficient information for the Subcommittee to find that the proposed Project will not have an unreasonable adverse effect on historic resources. *See* App. Ex. 81.

Based on the undisputed record the Subcommittee finds that the Project will not have an unreasonable adverse effect on historic resources subject to the conditions set forth in Section IV. D., *infra*.

4. Air Quality (RSA 162-H: 16, IV (c); 301.14 (c))

The Subcommittee must determine whether the Project will have an unreasonable adverse effect on air quality. RSA162-H:16, IV (c). N.H. Admin. R. Site 301.14 (c) requires the Subcommittee to consider the following in its assessment of the impact on air quality:

(c) In determining whether a proposed energy facility will have an unreasonable adverse effect on air quality, the committee shall consider the determinations of the New Hampshire department of environmental services with respect to Applications or permits identified in Site 301.03(d) and other relevant evidence submitted pursuant to Site 202.24⁹.

There was no controversy about the effect of this solar energy facility on air quality.

Air quality is addressed in the Application at pages 53-54. The Applicant presented the testimony of Lise Laurin, App. Ex. 12 and her Greenhouse Gas Analysis Report, App. Ex. 38.

⁷ Those products include: Phase IA Archeological Assessment Report, App. Ex. 29; Phase IB Archeological Assessment Report, App. Ex. 31; the Project Area Form, App. Ex. 34; and the Determination of Effects Form, App. Ex. 36.

⁸ *See* DHR Concurrence Letter Phase IA Archeological Assessment, App. Ex. 30; DHR Concurrence Letter Phase IB Archeological Assessment, App. Ex. 32; DHR Project Area Response Letter, App. Ex. 35; DHR Concurrence Letter for Effects Evaluation, App. Ex. 37 and the DHR Project Review Finding dated December 6, 2019, App. Ex. 60; DHR Final Report dated April 17, 2020, App. Ex. 66.

⁹ Site 301.03 (d) requires that an Application identify all state and federal agencies with permitting or other regulatory authority and that the Application includes the Applications made to each state and federal agency. Site 202.24 governs the admissibility of evidence.

Her testimony and report conclude that the operation of the Project will cause between 84% and 91% less greenhouse gas emission than a similarly sized natural gas plant. Laurin, p. 6. She also testified that the Project is consistent with goals of the Regional Greenhouse Gas Initiative (RGGI), RSA 125-O:19.

The Applicant and Counsel for the Public stipulate that the record provides sufficient information for the Subcommittee to find that the proposed Project will not have an unreasonable adverse effect on air quality. *See* App. Ex. 81. The Subcommittee reached the same conclusion and found that the Project will not have an unreasonable adverse effect on air quality.

5. Water Quality (RSA 162-H: 16, IV (c); 301.14 (d))

The Subcommittee must determine whether the Project will have an unreasonable adverse effect on water quality. RSA162-H:16, IV (c). N.H. Admin. R. Site 301.14 (d) requires the Subcommittee to consider the following in its assessment of the impact on water quality:

In determining whether a proposed energy facility will have an unreasonable adverse effect on water quality, the committee shall consider the determinations of the New Hampshire department of environmental services, the United States Army Corps of Engineers, and other state or federal agencies having permitting or other regulatory authority, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, with respect to Applications and permits identified in Site 301.03(d), and other relevant evidence submitted pursuant to Site 202.24.

The Applicant argues that the Project plans as amended meet the requirements of DES and the Alteration of Terrain Bureau. The Applicant relies on the recommendation that the AOT permit be granted and incorporated into the Certificate. The Applicant relies on the AOT permit as well as its spill prevention and control plan to claim that the Project will not have an unreasonable impact on water quality.

Counsel for the Public did not independently address the issue of water quality.

The impacts of the Project on water quality are described in the Application at pages 54-56. As described *infra* the Applicant engaged in a lengthy consultative process with DES in order to obtain an AOT permit. The Committee had the benefit of reviewing the original AOT permit application, App. Ex. 16 and the original civil design drawings, App. Ex. 20, as well as the revised civil design drawings and plans, App. Ex. 82, and the final approval of the AOT permit by DES. App. Ex. 92. In the record the Subcommittee was able to review the NHFG wildlife recommendations, App. Ex. 86, and the wildlife assessment provided by the Applicant as part of the AOT permitting process. App. Ex. 87. The Applicant also presented the testimony of Joseph Persechino who described the efforts made by the Chinook to consult and comply with the requirements for the AOT permit. Mr. Persechino explained how Chinook reduced the impact of the Project on wetland buffers by eliminating one of the proposed roads to the southern array. Persechino Supp. p. 3. The record reflects some hazardous material may be on-site during construction. Callahan p. 5. After construction hazardous materials will not be stored on site. However, the transformers will house insulating oils which are not classified as hazardous. Callahan p. 5. The Applicant has provided a Spill Prevention, Control and Countermeasures Plan which will be updated prior to construction. *See* Callahan, p. 5; App. Ex. 39.

Having considered the AOT permit as granted by DES and the supporting exhibits along with the SPCCP. The Committee found that the Project as proposed and subject to the conditions contained in the AOT permit and the conditions set forth in Section IV D. *infra*, will not cause an unreasonable adverse effect on water quality.

6. Natural Environment (RSA 162-H: 16, IV (c); 301.14 (e))

The Subcommittee cannot issue a Certificate unless it finds the Project will not have an unreasonable adverse effect on the natural environment. RSA162-H:16, IV (c). N.H. Admin. R. Site 301.14 (e) requires the Subcommittee to consider the following in its assessment of impacts on the natural environment:

In determining whether construction and operation of a proposed energy facility will have an unreasonable adverse effect on the natural environment, including wildlife species, rare plants, rare natural communities, and other exemplary natural communities, the committee shall consider: (1) The significance of the affected resident and migratory fish and wildlife species, rare plants, rare natural communities, and other exemplary natural communities, including the size, prevalence, dispersal, migration, and viability of the populations in or using the area; (2) The nature, extent, and duration of the potential effects on the affected resident and migratory fish and wildlife species, rare plants, rare natural communities, and other exemplary natural communities; (3) The nature, extent, and duration of the potential fragmentation or other alteration of terrestrial or aquatic significant habitat resources or migration corridors; (4) The analyses and recommendations, if any, of the department of fish and game, the natural heritage bureau, the United States Fish and Wildlife Service, and other agencies authorized to identify and manage significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities; (5) The effectiveness of measures undertaken or planned to avoid, minimize, or mitigate potential adverse effects on the affected wildlife species, rare plants, rare natural communities, and other exemplary natural communities, and the extent to which such measures represent best practical measures; (6) The effectiveness of measures undertaken or planned to avoid, minimize, or mitigate potential adverse effects on terrestrial or aquatic significant habitat resources, and the extent to which such measures represent best practical measures; and (7) Whether conditions should be included in the certificate for post-construction monitoring and reporting and for adaptive management to address potential adverse effects that cannot reliably be predicted at the time of Application.

There was both agreement and dispute about the effects of the Project on the natural environment. The parties agreed that the Project was unlikely to have an adverse effect on moose concentration areas, mast stands (bear habitat), wildlife corridors, wetlands, streams, verna pools, endangered and threatened turtles, and several species of bats. However, Counsel

for the Public raised concerns regarding deer wintering yards, the Eastern small-footed bat, Northern long-eared bat and rare plants and natural exemplary communities¹⁰.

In the Application at pages 56-64 Chinook explains its assessment of the natural environment at the site. The Applicant reached its assessment after consultation with NHB, NHFG, and DES. During the consultative process Chinook was alerted to the possible presence of Blanding's turtle and wood turtle near the site. As a result, Chinook will take measures to fence out turtles during the construction period and to build ramps that will allow turtles to exit the construction area should they find their way in. In addition, monitors will search the construction area for turtles each day. Valleau p. 15-16. Once construction is complete fencing within the Project area will leave a bottom-gap tall enough to allow small wildlife to pass. In addition, fencing will surround contiguous solar arrays thus allowing room for travel by larger animals through the Project area. *Id.*

The Applicant argues that the Project as presently proposed and conditioned by the AOT permit will not unreasonably and adversely affect the natural environment. The Applicant relies on its own and CFP's expert witnesses for the proposition that the Project will not adversely impact moose wintering areas, wildlife corridors, streams, vernal pools, wetlands, five species of bats, and the endangered and threatened Blanding's and Wood turtle. Applicant Closing argument p. 7-8. The Applicant also argues that it has agreed to change the access road to the southern array to preserve more wetland buffer and that it has agreed to a condition that prohibits logging activities between November and March in order to avoid impacts to the little brown bat

¹⁰ Counsel for the Public through her witnesses raised a concern that the Project includes unnecessary roadwork that impinged on the wetland buffer. The Applicant resolved that concern by eliminating one of the roadways near the southern array leaving a wider buffer.

species. Applicant Closing argument p. 8. The Applicant claims that neither NHB nor its own field studies demonstrate the existence of rare plant species and that the Project would not have an impact on exemplary natural communities. The Applicant states that the heavily logged condition of the site will over time become more habituated for various species of plants and animals as most of the site will be subject to conservation easements that will permit forest growth and provide additional deer wintering areas, and other habitat for wildlife. Overall, the Applicant claims there is a net benefit for wildlife and plant life as a result of the Project and its adjacent conservation areas. Applicant Closing Argument p. 9.

Counsel for the Public acknowledged that the testimony and evidence largely support claims of minimal impact to the environment. However, she argues that the Arrowwood witnesses and Dr. Reynolds have demonstrated areas overlooked or not addressed by the Applicant and as a result she requested the Subcommittee impose the following conditions:

Deer Wintering: Require a qualified environmental monitor to inspect for deer wintering areas before construction in an attempt to minimize the impact on deer wintering yards. Alternatively, construction activity should be prohibited between December 15 – March 15.

Bat Protection: Tree removal should be limited to the non-active bat season of November 1 – March 31. *(The Applicant agreed to this condition.)*

Bat Protection: The Applicant should be required to prepare a rock feature monitoring plan, as testified to by Dr. Reynolds, to be included in any construction or blasting plan. Such a plan, which would ensure inspections occur of any rock features before modification, during the active bat season of May 15 – August 15. *(See section IV A. supra for a similar condition already imposed by the Subcommittee.)*

The Subcommittee does not find that the Project will have an adverse effect on deer wintering areas. Neither NHFG nor NHB raised concerns about the effect of the Project on deer. Most of the Project area has been used for timber harvesting and has already been heavily logged. The field evidence presented by Arrowwood is inconsistent demonstrating some signs of

opportunistic browsing in areas of the Project but no sign of deer remaining in any particular area. The Subcommittee was unpersuaded by Arrowwood's reliance on a map prepared by an unidentified University of New Hampshire graduate student. Finding insufficient evidence of an adverse effect on deer the Subcommittee declines to impose the condition requested by Counsel for the Public.

Neither the information provided by NHB nor field studies identified the presence of exemplary natural communities or rare plant species within the Project area. The Subcommittee finds the suggestion by the Arrowwood witnesses that a further rare plant inventory or field studies extending outside the bounds of the Project area to be unnecessary in this case. In making this determination the Subcommittee recognizes that much of the site will be subject to wildlife-focused conservation easements that should benefit wildlife, exemplary natural communities and rare plants in the future.

The Subcommittee heard testimony regarding the efforts to determine the extent and species of bats that use the Project site. While Dr. Reynolds was critical of Chinook's sampling efforts, he explained that habitat loss is not likely to cause population level effects on most species of bat. The Subcommittee notes that the Applicant has already agreed that it will not clear trees between November 1, and March 31. This condition may mitigate effects on tree-roosting bats and will be included as a condition of the Certificate.

The Northern long-eared bat and the eastern small-footed bat cause additional concern. They are state endangered species and there are areas within the Project area containing boulder or rock formations that attract the species. The Subcommittee applauds the Applicant's efforts to detect these species but remains concerned that the destruction of boulder and rock formations during construction may have an unreasonable adverse effect. As a result of this concern the

Subcommittee requires the Applicant to consult with NHFG to develop a rock feature monitoring plan to be incorporated into its blasting plan. This condition is set forth in section IV A. supra.

With the conditions contained in this section and the conditions set forth at section IV A. the Subcommittee finds the Project as proposed will not have an unreasonable adverse impact on the natural environment.

7. Public Health & Safety (RSA 162-H: 16, IV (c); 301.14 (f))

RSA162-H:16, IV (c) requires the Subcommittee to determine whether the Project will have an unreasonable adverse effect on public health and safety. N.H. Admin. R. Site 301.14 (f) requires the Subcommittee to consider the following in its assessment of the impact on the public health and safety:

(f) In determining whether a proposed energy facility will have an unreasonable adverse effect on public health and safety, the committee shall: (1) For all energy facilities, consider the information submitted pursuant to Site 301.08 and other relevant evidence submitted pursuant to Site 202.24, the potential adverse effects of construction and operation of the proposed facility on public health and safety, the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures;

Site 301.08 (d) requires solar energy Applicants to submit the following:

(1) Except as otherwise provided in (a)(1) above, an assessment of operational sound associated with the proposed facility, if the facility would involve use of equipment that might reasonably be expected to increase sound by 10 decibel A-weighted (dBA) or more over background levels, measured at the L-90 sound level, at the property boundary of the proposed facility site or, in the case of an electric transmission line or an energy transmission pipeline, at the edge of the right-of-way or the edge of the property boundary if the proposed facility, or portion thereof, will be located on land owned, leased or otherwise controlled by the Applicant or an affiliate of the Applicant;

(2) A facility decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility Projects and cost estimates; the decommissioning plan shall include each of the following:

- a. A description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials;
 - b. The provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating;
 - d. All transformers shall be transported off-site; and
 - e. All underground infrastructure at depths less than four feet below grade shall be removed from the site and all underground infrastructure at depths greater than four feet below finished grade shall be abandoned in place;
- (3) A plan for fire safety prepared by or in consultation with a fire safety expert;
 - (4) A plan for emergency response to the proposed facility site; and
 - (5) A description of any additional measures taken or planned to avoid, minimize, or mitigate public health and safety impacts that would result from the construction and operation of the proposed facility, and the alternative measures considered but rejected by the Applicant.

Pages 64-68 of the Application address public health and safety. The Project will be constructed in compliance with National Electric Safety Code (NESC).

a. Fire and Emergency Response

The Application includes an emergency response and fire safety plan consistent with N.H. Admin. R. 301.08 (d) (3) and (4). App. Ex. 49. The MOU with Fitzwilliam also includes emergency response provisions. App. Ex. 67. The delegation of oversight to the Fire Marshal, *see* section IV C., should contribute to assuring public safety in the event of a fire or other emergency. The Subcommittee finds that the Project as proposed will not have an unreasonable adverse effect on public safety as it pertains to fire prevention and fire and emergency preparedness and response.

b. Noise Impacts.

The Applicant presented evidence that the Project will remain within the sound limitations of N.H. Admin. R. Site 301.08 (d)(1). The Applicant presented testimony from Marc Wallace. App. Ex. 8, 73. Mr. Wallace conducted an initial sound study, App. Ex. 47, that included twenty-four hours of unattended ambient sound measurements and modeling of those measurements at 51 residential receptors. His initial study demonstrates that the Project sound will be within the limits set by the Fitzwilliam sound ordinance and the N.H. Admin. R. Site 301.08 (d)(1). Wallace p. 6. Mr. Wallace analyzed the sound levels generated by a similar project in Ludlow Vermont and determined that the additional sound generated is imperceptible. Wallace Supp. p. 3. Mr. Wallace also investigated the use of certain sound mitigation barriers but determined they would be unnecessary. Wallace Supp. p. 4

Counsel for the Public stipulates that there is sufficient evidence in the record to find there will be no unreasonable effect on public health or safety stemming from Project noise. Based on the sound studies the Project will operate well within the sound standards set forth in our rules and the sound limits contained in the Fitzwilliam ordinance.

The Subcommittee finds that the Project will not have an unreasonable adverse effect on public health and safety as it relates to sound impacts.

c. Decommissioning. The Applicant presented a decommissioning plan in accordance with N.H. Admin. R. Site 301.08 (d)(2). The plan provides a cost of decommissioning estimate of \$900,432.00 if the requested waiver (*See below*) is granted.

d. Motion for Waiver. The Applicant moved to waive the requirements of N.H. Admin. R. Site 301.08 (d)(2)(d). The Applicant seeks a waiver of rule N.H. Admin. R. Site 301.08 (d)(2)(d) requiring all underground infrastructure depths less than 4 feet below grade to

be removed from the site during decommissioning. The Applicant claims NESC requires conductors to be installed at a minimum of 36 inches below grade. Compliance with the rule would cause significant ground disturbance upon decommissioning. Chinook requests that only cables installed at three feet in depth or less and any other equipment that is located underground at depths of three feet or less, be removed during decommissioning.

The second part of the waiver request seeks permission to allow solar racking piles concreted into rock to be cut off at the interface to the concrete in lieu of removing the pile to a depth of 3 feet. The Applicant asserts that the remaining infrastructure is inert and consists of standard building materials. Removal would cause significant disturbance.

Counsel for the Public does not take a position on the motion.

In order to grant a waiver of a rule the Subcommittee must find that waiver serves the public interest and will not disrupt the orderly and efficient resolution of matters before the Subcommittee. *See* N.H. Admin. R. Site 302.05 (a). In determining the public interest, the Subcommittee shall waive a rule if it determines that compliance would be onerous or inapplicable given the circumstances of the affected person or the purpose of the rule is satisfied by an alternative method. *See* N.H. Admin. R. Site 302.05 (b).

The Subcommittee discussed the fact that much of the underground infrastructure of this Project is buried conduit that runs throughout the Project area but does not extend to other extensive areas of the site that are slated for conservation easements. After decommissioning, the Project area itself will also be subject to conservation easements. There should not be a need for excavation once these areas are dedicated to the conservation use. The conduit should not pose a problem if it remains at levels that are at least three feet under grade. In this respect the Subcommittee finds that the waiver will eliminate more extensive and potentially damaging

ground disturbance. Similarly allowing the solar rack piles to be cut at the interface with rock when less than three feet under grade will also avoid additional ground disturbance and the potential for blasting and drilling which may cause environmental concerns.

This avoidance of ground disturbance and the dedication of the area to conservation easements serves the public interest and will not interfere with the orderly and efficient resolution of matters before the Subcommittee. The purpose of the rule is satisfied by the alternative proposed by Chinook. The Subcommittee grants the motion for waiver of N.H. Admin. R. Site 301.08 (d)(2)(d) to the extent that all underground infrastructure at depths less than *three feet below grade* shall be removed from the site and all underground infrastructure at depths greater than *three feet below finished grade* shall be abandoned in place. In addition, the solar rack piles that are concreted into rock may be cut off at the concrete interface in lieu of removing the pile to a depth of three feet.

e. The Surety Bond for Decommissioning and/or Restoration. The Applicant proposed a decommissioning bond in the amount of \$900,432.00 in the form of a surety bond. The decommissioning plan, App. Ex. 48, defines decommissioning as “the removal of system components and the rehabilitation of the site to pre-construction conditions. The typical goal of project decommissioning and reclamation is to remove the installed power generation equipment and return the site to a condition as close to a pre-construction state as feasible.” The decommissioning plan further states: “The decommissioning process will initiate upon the completion of the project’s useful life or the end of the property lease term.” App. Ex. 48. The language in the plan led the Subcommittee to consider meaning of the term “decommissioning” and nature of the surety bond securing the decommissioning process.

The Subcommittee recognized and endorsed the definition of the term decommissioning as described in the decommissioning plan. Particularly the Subcommittee requires the term decommissioning to extend to the removal of infrastructure and the rehabilitation of the site to its pre-construction condition. Of greater concern is when the security of the surety bond will begin to apply. The decommissioning plan and the MOU with Fitzwilliam are ambiguous in this regard. The Subcommittee requires that the surety bond for decommissioning must cover both removal and rehabilitation of the site and that the bond be in place before construction begins. This assure that liability on the bond is current throughout the construction process and will be available in the event that the Project is abandoned before commercial operation. The bond shall then remain in effect throughout the life of the Project. This shall be a condition of the Certificate¹¹. Subject to this condition and the granted waiver the decommissioning plan is approved.

Having considered all aspects of the Application, the fire safety and emergency preparedness plan, the impacts on sound, the decommissioning plan and surety requirements, the Subcommittee found, subject to the conditions set forth above, that the Project will not have an unreasonable adverse effect on public health and safety. The conditions shall become part of the Certificate.

Counsel for the Public suggested requiring additional financial assurances and/or bonding for the Project. However, she was not specific about what should be bonded. Given the conditions applied to the decommissioning plan and the decommissioning surety bond the Subcommittee determined that further financial assurances were not necessary.

8. Orderly Development of the Region (RSA 162-H: 16, IV (b); Site 301.15)

¹¹ The Subcommittee also considered adding the State as an obligee on the surety bond but voted against that condition (5-2).

The Subcommittee must determine if the site and facility will unduly interfere with the orderly development of the region with due consideration given to the views of municipal and regional planning commissions and municipal governing bodies. *See* RSA 162-H:16, IV (b). N.H. Admin. R. 301.05 provides the criteria that the Subcommittee must consider in reviewing the effects of the Project on the orderly development of the region:

Site 301.15 Criteria Relative to a Finding of Undue Interference. In determining whether a proposed energy facility will unduly interfere with the orderly development of the region, the committee shall consider: (a) The extent to which the siting, construction, and operation of the proposed facility will affect land use, employment, and the economy of the region; (b) The provisions of, and financial assurances for, the proposed decommissioning plan for the proposed facility; and (c) The views of municipal and regional planning commissions and municipal governing bodies regarding the proposed facility.

The Application addresses orderly development of the region at pages 69-78. Counsel for the Public stipulated that the Project will not interfere with the orderly development of the region. *See* App. Ex. 80 and 81.

The Subcommittee recognizes that the site is currently used for timber harvesting and has been heavily logged. The change in use of the site will not change the rural character of the area nor unduly interfere with the orderly development of the region. In fact, most of the site will remain in its current state and subject to conservation easements that should enhance its environmental attributes.

App Ex 80 is a stipulation wherein the Applicant and Counsel for the Public agree that the Project will not unduly interfere with orderly development. The stipulation relies on the report of Matthew Magnusson that concludes the Project bring a net positive economic impact to the Town of Fitzwilliam and the overall State of New Hampshire. Construction is estimated to support approximately 95 FTE jobs (of which 60 jobs are expected to be in construction) and providing over \$8 million in economic value to the overall state economy. The development

phase of the Project (prior to construction) is expected to support 11 jobs and \$1.1 million in economic value added in NH. After the construction period, the Applicant claims a net positive impact where the Project is expected to support 5.7 to 7.1 FTE jobs and an additional \$0.6 to \$0.7 million in annual economic value to the NH economy. The report also suggests that a payment in lieu of tax agreement payment would provide a direct economic benefit to the Town of Fitzwilliam, estimated to be \$300,000.00 annually. *See App. Ex 57, 58.*

The second stipulation App Ex 81 relies on the economic report of Mr. Magnusson as well as the various land use and planning documents from the Town of Fitzwilliam and the Southwest Regional Planning Commission to claim that the record provided more than sufficient information to conclude the Project will not unduly interfere with the orderly development of the region. In addition to the economic benefits of the Project the undisputed Magnusson report concludes that the Project will not have an adverse effect on tourism or real estate values in the region.

Based upon the undisputed economic evidence and the stipulations of the parties the Subcommittee finds that the Project will not negatively affect employment, real estate values or tourism in the region. The Subcommittee further finds that the Project should provide net economic benefits to the region.

The Applicant initially requested that the Subcommittee preempt local authority and grant a subdivision of that portion of the Project where the substation will be located. The Applicant sought this relief because the distribution entities National Grid and MAP require ownership of the substation as part of its system. During the adjudicative hearing members of the Subcommittee raised significant questions about whether the Site Evaluation Committee has been delegated the authority to subdivide land by the legislature. Before deliberations, the

Applicant advised the Subcommittee that it no longer sought subdivision approval from the Subcommittee but would *Seek* it from the Fitzwilliam Planning Board.

The Subcommittee has approved a decommissioning and restoration plan as well as the security of a surety bond to be posted before construction begins. To assure that the purpose of the decommissioning plan and funding assurance is not frustrated at the substation location, the Subcommittee determined that it would condition the Certificate on approval of the subdivision by the Fitzwilliam Planning Board. Such approval must include provisions for decommissioning and restoration and financial assurances securing the provisions. This will be a condition of the Certificate.

In considering the orderly development of the region the Subcommittee considered the views of municipal and regional planning commissions and municipal governing bodies regarding the proposed facility. The record reflects that the Town of Fitzwilliam favors the granting of a Certificate. Fitzwilliam has engaged in extensive consultations and negotiations with Applicant and has signed memorandum of understanding that governs many aspects of the siting construction and operation of the Project. *See App. Ex. 67.* The Subcommittee finds that the Project is consistent with the Fitzwilliam Master Plan and with ordinances governing rural character, solar energy, noise and wetlands protection. *See App. Ex. 54, 55, 56.* The Project is also consistent with the goals of the Southwest Regional Planning Commission as set out in its planning documents pertaining to economic development, natural resources and community planning. *See App. Ex. 51, 52, 53.*

Having considered the views of regional and municipals planning agencies and municipal governing bodies the Subcommittee finds that, subject to the conditions set forth above, the Project will not unduly interfere with orderly development of the region.

9. Public Interest (RSA 162-H: 16, IV (c); 301.16)

The Applicant must satisfy the Subcommittee that the issuance of a certificate will serve the public interest. *See* RSA 162-H:16, IV (c). N.H. Admin. R. Site 301.16 requires the Subcommittee to apply the following criteria to determine if a Project serves the public interest:

Site 301.16 *Criteria Relative to Finding of Public Interest*. In determining whether a proposed energy facility will serve the public interest, the committee shall consider:

- (a) The welfare of the population;
- (b) Private property;
- (c) The location and growth of industry;
- (d) The overall economic growth of the state;
- (e) The environment of the state;
- (f) Historic sites;
- (g) Aesthetics;
- (h) Air and water quality;
- (i) The use of natural resources; and
- (j) Public health and safety.

RSA 162-H:1 recognizes that the siting of energy facilities has significant impacts and benefits to the public across a wide spectrum of concerns. The Subcommittee is charged with maintaining “a balance among those potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire.” When considering whether

the Project will be in the public interest, the Subcommittee considers both impacts and benefits of the Project. *See* RSA 162-H:16, IV.

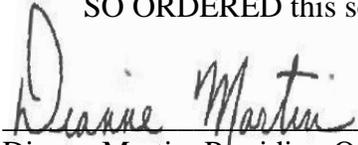
In this case the Subcommittee finds the benefits to outweigh the adverse impacts of the Project. There was little dispute about the benefits of this Project. The Project is consistent with the planning goals of Fitzwilliam and SWRPC and will generally provide economic benefits to the region in the nature of employment opportunities and economic growth. It will provide a new renewable source of energy without harmful emissions. At the same time, the Project will not harm real estate values or tourism. The Applicant engaged in extensive consultation and negotiations with local and state government agencies resulting in a Project with conditions that should not have an unreasonable adverse effect on aesthetics, historic sites, air or water quality, the natural environment or public health or safety.

Every energy facility will have impacts and benefits, but this Project has not generated controversy. While there were a few objections raised by Counsel for the Public and in some public comments the benefits of the project are for the most part uncontroverted and the adverse impacts comparatively slight. In structuring conditions, the Subcommittee has attempted to address areas where the impacts are greatest. After considering the Project's impacts and benefits and all other relevant information pertaining to the factors set-forth in Site 301.16(a)-(j) the Subcommittee finds that the Project will serve the public interest.

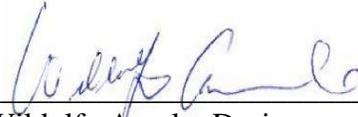
VII. Conclusion

For the reasons set forth herein, the Application for a Certificate of Site and Facility is approved, subject to the conditions contained herein and, in the Order and Certificate of Site and Facility issued contemporaneously herewith.

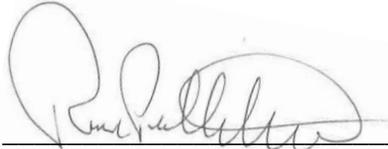
SO ORDERED this seventeenth day of December, 2020.



Dianne Martin, Presiding Officer
Site Evaluation Committee
Commissioner and Chairwoman
Public Utilities Commission



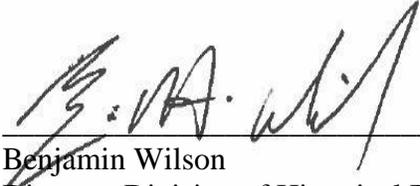
Wildolfo Arvelo, Designee
Director
Division of Economic Development
Department of Business and Economic Affairs



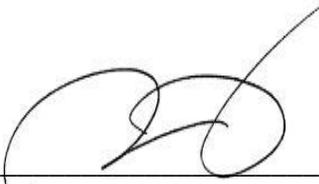
Rene Pelletier, Designee
Assistant Director
Water Division
Department of Environmental Services



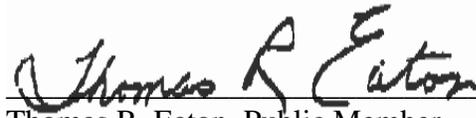
William J. Oldenburg, Designee
Assistant Director of Project Development
Department of Transportation



Benjamin Wilson
Director, Division of Historical Resources
Department of Natural and Cultural
Resources



Susan V. Duprey, Public Member



Thomas R. Eaton, Public Member

APPEAL PROCESS

Any person or party aggrieved by this decision or order may file an appeal to the New Hampshire Supreme Court by complying with the following provisions of RSA 541.

R.S.A. 162-H: 11 Judicial Review. – Decisions made pursuant to this chapter shall be reviewable in accordance with RSA 541.

R.S.A. 541:3 Motion for Rehearing. - Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

R.S.A. 541:4 Specifications. - Such motion shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the commission shall be taken unless the appellant shall have made application for rehearing as herein provided, and when such application shall have been made, no ground not set forth therein shall be urged, relied on, or given any consideration by the court, unless the court for good cause shown shall allow the appellant to specify additional grounds.

R.S.A. 541:5 Action on Motion. – Upon the filing of such motion for rehearing, the commission shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the commission may prescribe.

R.S.A. 541:6 Appeal. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the Supreme Court.